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ABSTRACT

This book offers an overview of educational finance law and examines constitutional challenges to state aid plans. Chapter 1 provides an introduction to education finance litigation, including the early history of education finance litigation and early education finance theory. Chapter 2 discusses the states' responsibilities for providing equal educational opportunities for public education. The third chapter discusses the relationship between revenues (state and local) and equity (horizontal and vertical). Chapter 4 examines state finance distribution formulas, and chapter 5 presents measurements of education finance equity that occur along the three dimensions of resource accessibility, wealth neutrality, and tax yield. The sixth chapter examines two aspects--the philosophical and constitutional--of the basis for education finance challenges. Overviews of early and contemporary education finance literature are presented in chapters 7 and 8. Chapter 9 offers an analysis of present strategies and lawsuits, and the final chapter discusses the future of education finance issues. Five tables, three figures, and a tables of cases are included. (LMI)

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EDUCATIONAL FINANCE LAW:
Constitutional Challenges to State Aid Plans—An Analysis of Strategies

R. Craig Wood and David C. Thompson

NOLPE

No. 50 in the NOLPE Monograph Series

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CHAPTER 1
INTRODUCTION TO EDUCATION FINANCE LITIGATION

Introduction

> The gradual development of the principle of equality is a providential fact. It has all the chief characteristics of such a fact: it is universal, it is durable, it constantly eludes all human interference, and all events as well as all men contribute to its progress.[1]

In *Democracy in America*, Alex B. Toqueville noted that even in its formative stages our country attempted to be a place in which individuals could achieve an economically viable and socially productive position solely because of their individual merits and work ethics. This idea of individual gain based on one's ability, achievement, and industry, permeates the concept of political and social equality in the works of many early political thinkers of our society.

Equity and equality are often utilized in a very similar, if not synonymous, manner. However, within the conceptual framework of education finance theory and operations, this interchangeable usage is not entirely correct. Equality is not necessarily equity. In reality, equity significantly extends beyond the more basic concept of equality. Equity must be defined as treating individuals with a standard that reflects a fundamental sense of fairness. Equity is further defined as treating unequals in an unequal manner so as to produce some form of fairness of treatment. An inherent sense of justice between and among individuals within our society must exist, or at a minimum, be pursued. However, it is difficult to reach these elusive and far-reaching goals, perhaps because equity is sometimes utilized as a vaguely understood notion in guiding popular ideas within society. It is often merely a function of the popular ideology with no fundamental framework to support it. Lastly, equity may be a concept that reflects existing laws and programs that provide firm and often rigid standards against which a practice is balanced.[2]

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1. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA, ix (1835) (Phillips Bradley ed., Vintage Books 1945).
2. *See* W. B. DORFMAN, EDUCATIONAL OPPORTUNITY 9 (1978).

Concepts such as equity permeate popular ideology and reflect various political agendas. Often, these concepts lack a fundamental factual base. Most people's understanding of equity, in a similar manner, is highly dependent on highly subjective individual or collective perceptions and philosophies. Consequently, widespread assumptions and views regarding an elusive ideal such as equity often better reflect the politics of a given generation rather than any understanding of the realities of equity implementation.

These collective perceptions affect many issues; one example impacted by these perceptions is the narrow legal definitions of suspect classifications. This is not to suggest that these perceptions have, or do not have, legal merit. Rather, it merely states the obvious: collective groups perceive equity in ways congruent and incongruent with legal theory. This is a tension that permeates society, and some would argue it is merely the natural consequence of de Tocqueville's observation in action. Regardless, equity attempts to achieve a higher level of justice and the resultant rights in order to attain what is perceived to be a greater, better, and more economically productive society. Unfortunately, within popular ideology, equity concerns are often misnamed and referred to with what are, in reality, political agendas or collective misperceptions involving group and individual failures of society. Given the nature of these agendas, the distinction is often difficult to grasp and articulate; yet some basic clarification is possible.

Public elementary and secondary education is reserved for state governments under the Tenth Amendment of the United States Constitution. Thus, each state legislature has created a system of state and local moneys for the financing of public elementary and secondary education; these systems have evolved over numerous years. The financing of public education has a long and illustrious history involving societal tensions in terms of education finance methodology and adjudicating these methodologies relative to various equity agendas, including perceived wrongs within society.[3] Nevertheless, many substantial political, educational, and economic issues remain unclear to public policy makers con-

3. The authors by design make no attempt to describe and analyze all education finance cases that have appeared in the courts over the years. There are several recent commentaries within this broad arena reflecting a number of excellent publications *see, e.g.*, ALBERTINA BAILEY, SCHOOL FINANCE LITIGATION: A RENEWED IMPULSE FOR REFORM (1991); Deborah A. Verstegen, *Insidiousness and Inviolability in Public Education Finance*, 26 EDUC. ADMIN. Q. 205-234 (1990); *See generally*, Symposium, *Investing in Our Children's Future: School Finance Reform in the '90s*, 28 HARV. J. ON LEGIS. 293 (1991); Michael W. La Morte, *Courts Continue to Address the Wealth Disparity Issue*, 11 EDUC. EVALUATION & POL'Y ANALYSIS 3-15 (1989); Mark G. Yudof, *School Finance Reform: Don't Worry, Be Happy*, NOLPE NOTES, May 1991 at 1, 1-5.

cerning the most acceptable manner of equitably and adequately funding public elementary and secondary education. Thus, basic and fundamental questions have yet to be agreed upon within this political, economic, and educational arena. Consequently, many of these fundamental tensions will continue to exist and result in education finance litigation. These issues tend to address questions involving the fundamental purposes for which our society finances public education. Numerous researchers and public commentators have puzzled over these goals, many of which are mutually exclusive as to the purpose of state financing methodologies. Illustrating this tension would be the various public policy issues about whether public schools are to be financed based on the principles of equity or whether they are to be financed based on providing excellence in order for our society to compete in future world marketplaces.[4] Is fulfilling minimal standards for all students or educating fewer students for academic excellence to be the criteria for society's decisions? Are public moneys to be used in some manner to support private education under the concept of state-sponsored voucher, tax, or choice plans? While certain arguments may be advanced, no tensions rival those compounded by scarce fiscal resources for public support of education in private, often religiously affiliated, institutions. All of these tensions collectively demonstrate that society has yet to reach consensus on the purposes and goals of its own public educational system. Consequently, such tensions, as well as the inherent conflicts of attempting to engage in competing policies, will exist in the future.

State policy makers will continue to face the various dilemmas inseparable from attempting to achieve excellence in public education.[5] Given the financial resources and political constraints that exist, such an achievement is improbable in the near future, and there is no compelling evidence to suggest that either the constraints or limited financial resources will change for the better over the next several generations. Further, one may argue that fiscal equity in public education has been used as a device to constrain taxes at the state and local level and to perpetuate limited access to adequate revenues.[6] Nevertheless, equal distribution of resources in funding public elementary and secondary education can have beneficial aspects, depending upon how distribution formulas are implemented.

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4. *See, e.g.*, R. Craig Wood and David. S. Honeyman, *Adequacy and Excellence: Twin Dilemmas for the States*, 17 EDUC. CONSIDERATIONS, 27-30 (1990).
5. *Id.*
6. This argument was first presented by R.L. JOHNS, THE EVOLUTION OF THE EQUALIZATION OF EDUCATIONAL OPPORTUNITY IN FLORIDA (1977).

Our nation's financial community is not monolithic. Often, economic as well as social issues compete within the same financial community. What may benefit one segment of the financial community may not benefit another. In many states, businesses have led the charge for education reform in order to produce a more highly trained workforce, while opposing any increase of personal or corporate taxation. In other states, the businesses have opposed any greater moneys for public education, believing a higher-trained workforce would merely raise productivity costs for the private sector.

The struggle for adequacy and excellence is one that has resulted in conflicts spanning many generations of American history. Many segments view public education as the vehicle to escape a life of poverty and perceived injustice. The hope of personal advancement for the next generation has long been cherished by both parents and grandparents. Yet, these individual and collective goals of society must be supported in a fiscally adequate and equitable manner. Hypothetical aspirations and goals must be balanced with the ability of society to fund their transformation into realities.

Because the cost of excellence is often politically of financially unacceptable, the goal of obtaining adequate and excellent public education is a complex undertaking. An equitable distribution of funds may provide for the fostering of excellence in eduction. However, an equitable distribution of scarce resources may also result in an equal dispersion of poverty. Such poverty, and the potential for lack of opportunity it engenders, hardly further societal goals. Consequently, an overriding goal must be balancing the accessibility of possible excellence for the next generation in order to protect economic and social well-being.

Throughout education finance litigation, the following types of arguments have emerged:

(1) suits that seek to establish education as a fundamental right because of public education's impact on social and economic structures within our society; and/or

(2) suits that seek to show that funding disparities result in unequal opportunities by treating students in poor school districts differently from students who have greater access to fiscal resources.[7]

7. *School Finance and the Courts: A Reanalysis of Progress*, 59 EDUC. L. REP. (West) 945 (June 21, 1990).

Early History of Education Finance Litigation

The United States Supreme Court heard *Plessy v. Ferguson* in 1896.[8] This suit challenged the law requiring separate-but-equal facilities for blacks and whites using public transportation. The Court, recognizing the importance of the decision to the public schools of America, opined:

> The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.[9]

This argument appeared in subsequent litigation testing the decisions application to future legal disputes.[10] The first significant and specific public school suit based on the *Plessy* doctrine occurred in *Cumming v. Richmond* in 1899.[11] A Georgia county school board refused to provide a high school to minority students when it already provided one to white children of the district. This case is the first specific instance concerning public education funding heard by the Supreme Court. The school board argued that it could not fiscally operate two high schools within the district. The plaintiffs argued that either a school for minority children would have to be created or the school for the white children would have to be closed. The Court's reasoning reflected a curious cost-effective standard by today's value system:

> [I]f that were done, the result would only be to take from white children educational privileges enjoyed by them, without giving to colored children additional opportunities for the education furnished in high schools. The colored children of the county would not be advanced in the matter of their education by a decree compelling the defendant board to cease giving support to a high school for white children.[12]

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8. Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138 (1896).
9. *Plessy*, 163 U.S. at 544.
10. ARTHUR E. WISE, RICH SCHOOLS, POOR SCHOOLS 13 (1968).
11. Cumming v. Board of Educ. of Richmond County, 175 U.S. 528, 20 S. Ct. 197 (1899).
12. *Cumming*, 175 U.S. at 544.

This decision made a major distinction between what was perceived as a nonarbitrary denial of equal treatment versus a hostile denial of equal treatment as prohibited by the Fourteenth Amendment.[13] *Plessy* and *Cumming* established the Court's attitude in this broad arena for fifty years.

Early Education Finance Theory

In 1906, Elwood Cubberley wrote the seminal work, *School Funds and Their Apportionment*, in which he developed the concept of equalization of education funding for schools.[14] Cubberley perceived all children as equally important; therefore, society owed to each an equal share of the state fiscal responsibility and wealth. Cubberley originated the first clear conceptualization of fiscal equity as it influenced educational opportunity. Specifically, he wrote, "all the children of the state are equally important and are entitled to have the same advantages."[15] Cubberley conceived his work during a period in which public schools were, at best, marginal in quality and highly unequal in educational offerings and resources. Cubberley wrote of the need to motivate school districts to exceed minimal standards of the period. He perceived the goal of financing public schools as providing an equitable level of funding, albeit a rather modest level by today's standards, and a mechanism to provide local school districts with an opportunity to improve the level of education within various limitations. He advocated a flat grant or some form of a minimal dollar guarantee on which a school district could build. The present-day concept that a state should equalize educational programs to assure equal educational opportunity, however minimally, emerged from Cubberley's work during the early part of the 1900s. Critics have noted that equal educational opportunity has not significantly advanced since the days of Cubberley. Specifically, it was noted as late as 1992 that "[t]he principle of equal educational opportunity serves to justify demanding of public education something short of full equality: it demands only equality of opportunities, which is then the responsibility of school children or their parents to act on. . . ."[16]

The first known challenge to a state education finance distribution formula was in 1912 when the Supreme Judicial Court of Maine issued

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13. *See* PERRY A. ZIRKEL AND S. N. RICHARDSON, A DIGEST OF SUPREME COURT DECISIONS AFFECTING EDUCATION 87 (1988).
14. ELWOOD P. CUBBERLEY, SCHOOL FUNDS AND THEIR APPORTIONMENT (1906).
15. *Id.* at 18.
16. Kenneth R. Howe, *Liberal Democracy, Equal Educational Opportunity, and the Challenge of Multiculturalism*, 29 AM. EDUC. RES. J. 457 (1992).

an opinion in *Sawyer v. Gilmore*.[17] The plaintiffs argued a variety of concerns, from unequal taxation to unequal educational opportunities, as well as the denial of the Equal Protection clause of the Fourteenth Amendment. However, the court ruled against the plaintiffs, stating that the legislature had treated all residents similarly and thus no violation was inherent. Further, the court observed that the state legislature could not have an unconstitutional finance system as long as its distribution scheme was not expressly prohibited by the state constitution.

In the early 1920s, Harlan Updegraff significantly extended Cubberley's theories by advancing the concept that as local school districts were able to spend greater moneys for public education, the state would then vary the amount of state support as a result of those local efforts. In this manner, Updegraff argued, every child could be assured a minimum level of education in relation to the levels that other children received, regardless of the location within a given state. He envisioned an education finance system in which funds were distributed based on teacher units.[18] Updegraff argued that a variable-level foundation program would be directly linked to the allocation of moneys available for education, and the state would then provide the necessary funding to establish a minimum level of educational programs for all school districts within a given state.[19]

In the early 1920s, Strayer and Haig further developed these concepts by creating a series of education finance formulas that attempted to assure these education finance goals.[20] Strayer and Haig hoped to attain the following goals:

(1) Ensuring equal educational facilities to every child in the state,
(2) Providing for uniform tax effort throughout the state,

17. Sawyer v. Gilmore, 109 Me. 169, 83 A. 673 (1912).
18. A teacher unit in education finance is the concept that for a certain number of qualified students the district then receives the funding for the average cost of a teacher. Thus, e.g., if a teacher unit were to be set at 25 at a cost of $33,000 and if the district were to have 1,000 students, the district would receive 40 teacher units for which the state would then reimburse the school district in the amount of $1,320,000. In reality, the numbers utilized for a teacher unit will vary based upon weights and categories of students, as well as classifications of school districts. For example, small school districts may have a lower teacher unit number in order to overcome the inherent diseconomies of scale. Additionally, the state could allocate moneys based on a percentage of the value of each teacher unit and/or allocate moneys based on a sliding scale resulting from the wealth of the local school district.
19. *See, e.g.*, HARLAN UPDEGRAFF AND L. A. KING, SURVEY OF THE FISCAL POLICIES OF THE STATE OF PENNSYLVANIA IN THE FIELD OF EDUCATION (1922).
20. G. D. STRAYER AND R. M. HAIG, THE FINANCING OF EDUCATION IN THE STATE OF NEW YORK, REPORT OF THE EDUCATION FINANCE INQUIRY COMMISSION 173 (1923).

(3) Ensuring that the tax effort is related to the ability to pay, and
(4) In no way hindering the ability of local districts to raise funds above the minimal level to provide a better education for their children.[21]

These formulas were generically referred to as foundational programs or plans. As a result of such plans, it would be theoretically possible for a given school district not to receive any form of state aid for the general educational program. This would be due to the wealth of the local school district being so great so as to nullify any potential state aid. Currently, many states still utilize highly modified formulas based on these early attempts at equalization.

While Strayer and Haig utilized early education finance research, they significantly differed from Cubberley in one key aspect. Cubberley believed that the state should reward effort on the part of the local school district. Strayer, in particular, argued the opposing view; he believed that such rewards would only lead to even greater inequities. Thus, even at this early stage of education finance research and theory, a significant schism appeared. The reader should note that this basic concept is still debated as well as the actual results of various formulas. One can contend that such reward for effort tends to benefit only wealthy school districts, while penalizing poorer school districts because the disparity in available resources can only increase over time. The other position contends that it serves no useful purpose to fiscally penalize a group of students who happen to reside in high-wealth school districts. This position also suggests that to reduce moneys from such school districts is not politically acceptable, and in reality, produces insignificant moneys after redistribution to other districts. Such theoretical debate will continue in education finance circles; the only resolution will be reached within the judicial arena as discussed herein.

Regardless of inherent philosophical and data-driven arguments, by the end of the second decade of this century, education finance research was clearly established within the literature of public education. Education finance researchers were, in essence, legitimately investigating how best to improve education and educational opportunity for all children.

During the 1930s, Henry Morrison researched and advanced the idea of full state funding of public education.[22] Morrison proposed that all

21. *Id.*
22. Henry C. Morrison, School Revenue (1930).

public school districts be abolished and that reliance on the property tax be eliminated. A state would fund all expenditures for public education out of a required state income tax. Morrison's concepts met with great political opposition at both the state and local levels.

The status of financing public elementary and secondary education up through and during the 1950s reflected exploration of various forms of foundational programs based on Strayer-Haig concepts extended largely by Paul Mort over the previous decade. Formulas developed from such concepts were generally referred to as Strayer-Haig-Mort formulas. Essentially, Mort utilized these formulas to reflect required common educational programs.[23] In this manner, each child within a given state would be offered nearly the same educational opportunity. In order to actually implement this concept, Mort advanced the idea of the weighted pupil, in which the moneys distributed to school districts would be based on the classification scheme of pupils. In addition, such weighting could be based on the educational needs of the various classifications of students served. Students with special needs, such as special education categories, vocational education programs, or students enrolled in high-cost magnet school programs, would be funded at differentiated amounts based upon their classification.

During the early to mid-1900s, with greater access to public education data, education finance researchers began to make significant progress toward the analysis of education finance data as well as toward understanding the resultant educational and financial differences that existed within public elementary and secondary education in various states. Yet these data-based research studies were often not translated into practice, and state policy makers had not implemented the developing research regarding education finance. For a variety of reasons, many state legislatures were reluctant to acknowledge and utilize the research by education finance theorists. In fact, even in early lawsuits, the litigation process had difficulty attempting to actually apply the newest research disseminated within a system reliant on various political processes in its distribution of public moneys. The early cases were based on fairly simplistic data analyses by today's standards. Nevertheless, they offered a preview of the public policy debate and litigation for years to come.[24]

23. PAUL R. MORT, THE MEASUREMENT OF EDUCATIONAL NEED 8 (1924).
24. *See, e.g.*, Miller v. Korns, 140 N.E. 773 (Ohio 1923); Ehret v. Kulpmont Borough Sch. Dist., 5 A.2d 188 (Pa. 1939); State *ex rel.* Bd. of Educ. of City of Sapulpa v. State Bd. of Educ., 196 P.2d 859 (Okla. 1947).

Certain early cases were highly specific as to the distribution formula,[25] as well as the capital outlay mechanisms.[26]

In 1954, the Supreme Court reversed *Plessy v. Ferguson* with its landmark decision in *Brown v. Board of Education*.[27] The equality of educational opportunity in *Brown* is evidenced in the following passage of the decision:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[28]

Education finance theorists claim that this passage essentially means that where the government has undertaken to provide education, it must do so on an equal basis for all the residents of a given state. *Brown v. Board of Education*[29] marked the modern era of education finance theorists using the courts as the vehicle to shape education finance change. Social equity in education would ease into the consciousness of the American public from this point forward.

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25. Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (1966); Ingram v. Payton, 222 Ga. 503, 150 S.E.2d 825 (Ga. 1966).
26. Lebeauf v. State Bd. of Educ. of La. 244 F. Supp. 256 (E.D. La. 1965). The equitable and adequate distribution of capital outlay moneys has been the subject of examination, *see, e.g.*, R. Craig Wood, *State Plans for Financing School Construction*, COUNCIL EDUC. PLANNERS J., March/April, 1989, at 7, 7-8.
27. Brown v. Board of Educ., 347 U.S. 483, 74 S. Ct. 686, (1954).
28. *Brown*, 347 U.S. at 492-493.
29. *See* JAMES W. GUTHRIE, SCHOOL FINANCE POLICIES AND PRACTICES THE 1980s: A DECADE OF CONFLICT (1980).

CHAPTER 2
EQUAL EDUCATIONAL OPPORTUNITIES AND PUBLIC EDUCATION

The Status of Financing Public Education[30]

Philosophically, as well as operationally, the American public education system is an open system with the intent of educating every child. This system of public education has evolved over the years and is highly reflective of the society's values and aspirations. The primary purpose of public education is to benefit society through increased productivity, improvement of an individual's and society's quality of life, and increased standards of living for all people. Having an educated populace generally benefits society far more than the individual.

Everyone benefits from having an educated citizenry. Even individuals without children benefit because well-educated children mature to become productive, educated citizens who contribute to the overall quality of life. Every reputable economic study confirms that expenditures for public education are investments, rather than merely expenses, which yield sound, cost-effective economic and social returns. Therefore, the responsibilities and benefites of a well-funded education system are that of society as a whole.

Background

As reflected in the United States Constitution, public education is a state responsibility and function rather than a local or national function.[31] State legislatures have delegated the implementation of rules and regulations to state departments of education and other state agencies. Legislatures have also created school districts as managerial orga-

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30. Much of the discussion of the present status of financing public education is adapted from various publications by the authors including, DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES (1993); R. CRAIG WOOD AND DAVID S. HONEYMAN, HOW PUBLIC SCHOOLS ARE FINANCED (1990); and R. Craig Wood, William Riley, and Helene B. Jones, *The Pursuit of Equity in Financing Public Education, Chap. 1 in* MAJOR TOPICS OF SCHOOL BUSINESS MANAGEMENT IN THE MID 1980s 1, 1-9 (1984).

31. Those items not specifically mentioned in the Constitution are the responsibility of the states. The Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

nizations for the efficient operation of public education within each state. In most states, school districts are responsible for the day-to-day operations of the educational program.

The legal and administrative parameters that control education vary from state to state. Regardless of the scope of these parameters, a local board of education operates within the guidelines established by the state constitution, state statutes, administrative rules and regulations, as well as by the courts. It is the local school board's responsibility to successfully operate within these parameters. Equally important, the school board may not divest itself of any of these responsibilities nor accept any additional responsibilities.

Equal Educational Opportunities

Regardless of any specific state arrangements, a state has a legal obligation to see that all residents between certain ages are afforded an equal educational opportunity and a basic educational program. Further, this opportunity must be evenly distributed so as not to be a function of the relative wealth, or lack thereof, within a local community. Hopefully, regardless of where they live in a given state, children will be provided an equal opportunity to engage in educational programs. The only limitations of such programs should relate to the individual's desire to achieve. This goal of equity is in the best interests of the individual, community, and state, as well as the nation as a whole.

Because the state legislature is responsible for the education of its residents, it has plenary power over all elementary and secondary education. While striving for a sound educational system for its residents, the state legislature may generally create, combine, or dissolve school districts. While the local school board is charged with the responsibility of the day-to-day activities of the educational process, the state legislature must meet its responsibilities of ensuring basic educational opportunity for all the residents of a state.

In practice, the local school district must extend this minimum educational program to all residents. However, the wealth of any given state is not distributed in a uniform pattern. The ability of local districts to offer the state-mandated educational program varies considerably from community to community in concordance with this variation in wealth. In fact, one can expect to observe vast financial as well as socioeconomic differences between the poorest and the most affluent communities within a given state.

Wealth, regardless of how it is measured, naturally varies in distribution; consequently, inequity is the natural result of such variance unless

the state intervenes in some manner. In the arena of education finance, intervention by the state is essential if any form of equity is to be attained. The only method for such intervention is through using a distribution formula for state aid to local school districts. Such a method of intervention involves the distribution of state aid to local schools in order to offset the effects of local tax base differences. Even though states intervene through using these formulaes to offset wealth discrepancies, the basic understanding that funding of public education is based on the property tax is not inherently flawed; if the overall distribution formula were designed and implemented properly, reliance on the property tax would not be fundamentally unsound.

Given these economic realities, if each community were responsible for the total financial costs of offering a public education to its children, then one of the following situations would most likely occur:

- Certain communities would not be able to offer a basic educational program, or
- The residents of the poorest district would be taxed at exorbitantly high rates in order to offer a basic instructional program.

Compounding this dilemma, the wealthiest districts would be able to offer vastly superior public educational programs with little, if any, local taxing effort. This discrepancy in wealth distribution leads to the conclusion that because a child's educational offering should not be a function of the wealth within a local community, the state should tax the wealth of all its residents in order to provide fiscal assistance to poorer school districts.

CHAPTER 3
REVENUES AND EQUITY

State Revenues

Generally, states make an appropriation to support public enterprises based on a number of projections. Where applicable, projections may be based on state income tax revenues, state sales tax revenues, state financial reserves, the number of public school children, the cost of the previous year's program, and the overall fiscal health of the state. These projections are highly interconnected as well as dependent upon a variety of data. Consequently, they may periodically change due to economic conditions. States will also vary according to the amount of tax revenue utilized to support public education. It is not uncommon for tax revenues from motor vehicles, utilities and mining properties, inheritances, licenses and fines, as well as a host of other goods and services, to be used for educational purposes. Generally, all such revenues are fungible in nature so as to make it difficult to clearly trace which revenues support which expenditures. Certain funds may be earmarked for public education, the most common being lottery revenues.[32] However, more often than not, the funds for public elementary and secondary education are general revenues. Various other taxes support public education but are relatively small compared to income and sales taxes. In certain states, other revenues are available to fund education, such as utility taxes.

The majority of the time, any state revenues collected in support of public education will be broader in base than any local tax collections.[33] From an education finance statistical viewpoint, any time the tax base increases, the likelihood of unfair taxation decreases. Hence, state income and state sales taxes are understood as superior to any local property tax. This is due to the fact that state income and state sales taxes rely on the wealth of the state as a whole to fund public education, rather than the wealth of a local community. Thus, the growth of these

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32. *See, e.g.*, Steven D. Stark, R. Craig Wood, and David S. Honeyman, *The Florida Education Lottery: Its Use as a Substitute for Existing Funds and its Effects on the Equity of Public School Funding*, 18 J. EDUC. FIN. (forthcoming Fall 1993).
33. For a discussion of the conflicts of statewide equity issues versus those of local policymakers *see e.g.*, R. Craig Wood, *New Revenues For Financing Education at the Local Level, Chap. 3 in* THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE: TENTH ANNUAL AMERICAN EDUCATION FINANCE ASS'N YEARBOOK 59-75 (Julie Underwood ed., 1989).

state revenues enhances the likelihood of having a more fiscally neutral system for financing public education.[34]

Local Tax Revenues

Frequently, once all federal and state moneys have been determined, school boards are responsible for raising the difference through local efforts to support public schools. Without exception, every local board of education is bound by either statute or other governmental body directive, such as a formula that determines to what extent the local share may increase over the previous year's budget. Rarely may a board of education unilaterally set the local tax levy without approval from the electorate, town meeting, state agency, or other governmental body. Most states allow the local levy to be set within strict budgetary parameters determined by a specific formula set forth by the state legislature. Local property taxes generate nearly all local funds that support education. Certain user fees, book rentals, site rentals, and so on, may exist, but they only support public education to a small extent."

All individuals pay property tax in some form. For the farmer, it may serve as a tax on capital investment; for the renter, it is included within the monthly payment; for the merchant it is part of the overhead that is ultimately passed on to the consumer in the price of goods or services. Because there is a statistical relationship between an individual's wealth and an individual's property, the tax is stable and relatively easy to administer. Thus, it is highly useful as an equitable source for educational funds.

Frequently, due to state constitutional limitations, the assessed valuation of a property is actually only a percentage of its assessed value.[35] A levy is divided by the assessed valuation to produce the rate. Once the rate is determined pursuant to state statute, the rate is applied to the individual assessed value of each parcel of real estate and improvements thereon to determine the individual taxes each property owner must pay.

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34. It should not be assumed that by simply increasing the overall state aid in relation to local expenditures, greater equity will then result. This phenomena is highly dependant on the specifics of the state aid formula. *See*, R. Craig Wood, David S. Honeyman, and Vern Bryers, *Equity in Indiana School Finance: A Decade of Local Levy Property Tax Restrictions*, 16 J. EDUC. FIN. 83-93 (1990).
35. *See* R. CRAIG WOOD, 1986-87 PROPERTY ASSESSMENT PRACTICES FOR SCHOOL TAXATION PURPOSES (2d ed. 1987).
36. The assessed valuation may be referred to by a number of terms, *e.g.*, the grand list, the total and true cash value, the adjusted assessed value, and so on. For a complete listing of these terms see, R. CRAIG WOOD, 1986-87 PROPERTY ASSESSMENT PRACTICES.

Equity

During the 1970s, equity was the preeminent theme in education finance. Under pressure from the courts, states reevaluated the formulas used to distribute moneys to local school districts. For the most part, states increased their share of the cost of educating elementary and secondary students in an attempt to equalize the burden of financing schools. A variety of formulas emerged that attempted distributing state funds to balance local dependency on the property tax as a source of revenue for school operations. Generally, school districts with low property values would receive additional fiscal support so that taxpayers were not overburdened in their attempt to fund educational programs.

However, in the 1980s, the costs of providing educational programs continued to rise. Many states were confronted with decreased financial resources as well as diminished support from the federal government and taxation limitations imposed by voters. Unstable economic conditions forced changes in the methods states used to support public education. Those determining equity in education finance approach the problem from different perspectives. Some individuals argue for the need to reduce tax burdens by altering the distribution of state funds; others call for increased state participation as a cost-effective, long-term investment; and still others call for a redefinition of wealth in order to shift the burdens of the cost of education.

Because the responsibility for supporting public education should be equitably distributed throughout a state, several questions highly dependent on state data may emerge:

- Are equals receiving equal resources?
- Are unequals receiving unequal resources?
- Does each child have an equal opportunity to acquire the benefits of the educational process regardless of the wealth available to the local school? and
- How much should taxpayers pay?

Ability to Pay and Effort

Certain states use a variety of measures to determine the local ability to pay. Examples include combinations of property valuation, income, and sales tax measures. These variables are then manipulated within the education finance formula to balance the local share of the cost of education according to one of the following:

- The wealth (ability to pay) of the district,
- The effort that local taxpayers agree to support, or
- A combination of the two.

Horizontal and Vertical Equity

As a principle of equity in taxation, horizontal equity is understood as equal effort exerted by taxpayers with equal abilities to pay. For example, two individuals with the same income and the same value of housing should pay at the same property tax rate and support equivalent property tax burdens. As a second principle, vertical equity means that taxpayers with different abilities to pay should exert different efforts in support of tax burdens.

Equally important to tax burden accomodation is considering equity regarding expenditures per pupil. Concerns for horizontal and vertical equity at the point of taxation are directed at the procedures for generating revenues. States must also try to reasonably balance expenditures to ensure equity for all pupils educated under similar circumstances with similar educational abilities—horizontal equity. Likewise, allocations must be made for dissimilar expenditures on special, often disadvantaged, populations operating in different situations—student classifications that are based on vertical weightings. Both horizontal and vertical equity can be monitored. As a state monitors the costs of education in terms of expenditures per pupil, equity concerns should dominate the process of determining the taxpayer's burden in support of public education.

The importance of equity cannot be overstated. Equity is a philosophical construct that often drives distribution formulas used to maintain fiscal and educational fairness. These formulas have evolved through long political processes and attempts to balance the distribution of scarce financial resources within every state. As social, economic, and political events continue to change, education finance policies must be altered in order to assure equity.

CHAPTER 4
EDUCATION FINANCE DISTRIBUTION FORMULAS

Formula Distribution Schemes

Taxation must provide revenue for public education. If equal opportunity were both a legal and societal goal, then scarce resources would be distributed in an equitable manner. In practice, the only mechanism available to sustain equal educational opportunity is the financial aid distribution formula. Given an imbalance in the distribution of wealth, numerous attempts have been made to devise distribution aid formulas to offset the fiscal inequality of school districts. These basic formulas, as described herein, become increasingly complex as they attempt to consider vertical as well as horizontal equity.

Education finance studies performed during the early 1900s focused attention on several new and important issues: What level of education is appropriate? What share of educational costs should be borne by the state? How much control should the state exert over the operation of local schools? What does the equalization of educational opportunity mean?

By the mid-1930s, theoreticians such as Cubberley, Mort, Strayer, Haig, and others studied these questions. Their findings indicated that balancing financial support among all school districts within a state would balance the educational opportunities available to students. In general, the results of these studies indicated the need for formula distribution plans coupled with fair systems of taxation to balance state and local funds supporting public elementary and secondary education.

Gradually, states began to assume a greater share of the costs of operating schools. From 1930 to 1980, the state share in support of public schools throughout the United States increased from 17 percent to approximately 48 percent. By 1979, all states except Hawaii used some type of a formula program to determine the exact amount of that share. Today, the distribution plans most frequently used by states include: combinations of flat grants with variations of a foundation program, percentage or power equalizing program, and guaranteed yield or guaranteed tax base plan programs.

Although there are many variations of each formula used by states to calculate their share of the cost of education, the authors classify these formulas as follows:

- Flat Grant, Categorical or Entitlement Programs;
- Full State Support or Funding Programs; and
- Equalization Aid Programs.

A general overview of each of these formulas follows. Note that each state operates with a unique set of guidelines, and no single explanation of a formula or plan is appropriate for every situation.

Flat Grant Programs[37]

Flat grants are commonly defined as warrants paid to a local school without concern for the ability of the local patrons to pay for the services funded by the grant. Flat grants follow two forms:

- A grant based on some uniform measure of need; such as, dollars per pupil, dollars per mile, or dollars per teacher unit; and
- A grant based on variable or weighted units of need adjusted to prescribed local or instructional needs; such as, rural or urban geographical problems, enrollment sizes, additional costs for students with certain exceptions, and so on.

By the beginning of the 1900s, states funded an increased share of the costs of public schools. Frequently, variations of flat grant plans were used. By the 1920s, thirty-eight states allocated funds in support of public schools in the form of flat grant formulas. In these formulas, enrollment based criteria primarily determined the level of state aid for local school districts. Alone or in combination, other variations to determine state financial aid included average daily attendance, general enrollment, and school membership. By 1971, only ten states continued to use flat grants as their primary funding mechanism: Arizona, California, Connecticut, Oregon, Arkansas, Delaware, Nebraska, New Mexico, North Carolina, and South Carolina.

Today, states use various forms of flat grants to distribute supplemental aid to assist with the costs of several special operations and programs.

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37. *See* DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, *supra* note 30.

Included in these special programs are transportation,[38] the excess costs of special education, food services, textbooks, vocational education, and driver's education.

When the flat grant was the primary method for distributing state funds, the assumption was that each district deserved a given amount of financial support. However, because additional funds were necessary from local sources, state policy makers were reluctant and often unable to provide the entire costs of education. Additionally, these flat grants did not consider the capacity of the local district to support the necessary additional revenues.

These grants and payments violated many of the principles of equity and fiscal neutrality, particularly the principle that the wealth of the community should not determine the education of a child. As such, wealthy districts received the same payment per unit of measure as did poor districts. Wealthy districts could then raise additional revenue from the local property tax base with minimal tax rates; in contrast, poor districts were forced to impose higher tax rates in support of similar programs or forego such programs at the expense of their students.

As seen in Figure 1, which shows two school districts with different fiscal abilities, the operation of a flat grant is graphically striking. District A has an assessed valuation of $200,000 per pupil, whereas District B has an assessed valuation of $600,000 per pupil. Assuming that the state's share of the costs in each district was a flat grant of $2,200 per pupil and assuming that the actual cost was $4,000 per pupil, it is clear that each district must generate $1,800 from local tax sources. Under these conditions, several favorable attempts at equality can be seen. First, the districts are equal in the amount of money that must be raised locally. Second, every child has equal merit in that the state uniformly awards $2,200 per pupil to pay for educational services. Third, the level of the flat grant is high in that local districts must raise only 45 percent of the total costs per pupil. Fourth, the districts' tax rates are lower than if total program costs were locally funded. These conditions provide immediate benefits that relate to both adequacy and equity.

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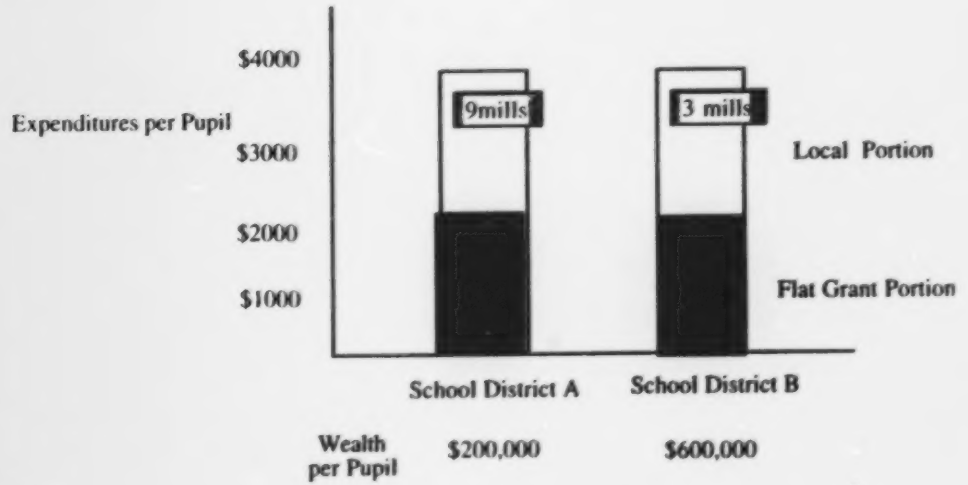
38. The definition within transportation is an amount of money per student given a formula based on a variety of variables that are independent of the wealth of the local school district. For a discussion of the Supreme Court determining the equal opportunity issues involving transportation see, R. Craig Wood, *Kadrmas v. Dickinson Public Schools: A Further Retreat From Equality of Educational Opportunity*, 15 J. EDUC. FIN. 429-436 (1990). For an examination of fiscal equity of a transportation formula *see*, R. Craig Wood, David S. Honeyman, and Brian Dawson, *The Distribution of Educational Transportation Funds in Indiana: An Examination and Equity Analysis*, 21 PLANNING AND CHANGING 53-62 (1990).

Most obvious is that the grant increases available revenues or, alternatively, allows for local tax relief. Additionally, the grant is highly neutral.

Nonetheless, District A must tax itself at a rate of 9 mills ($1,800 ÷ $200,000= .009), while taxpayers in District B need to pay only 3 mills ($1,800 ÷ $600,000= .003), a direct function of a tax base inequality of 3:1. Thus, the apparent neutrality of a flat grant is misleading in that taxpayers in poor districts pay higher tax rates to fund the same expenditure. If one accepts the view that equity is the aim of state aid, this result is unacceptable. Consequently, a flat grant can actually be unbalancing unless it covers the entire cost of a program. Practically, the latter can never be reached for political and technical reasons.[9] When states use flat grants which do not cover the entire cost of educational programs, the resulting disproportionate effort poor districts must extend can result in an unfair burden.

FIGURE 1
GRAPHICAL REPRESENTATION OF THE FLAT GRANT



Equalization Plans

States currently use many variations of equalization formulas. All operate on the assumption that the state and the local school district must share the costs of operating public schools. However, two philosophical questions may be asked to help explain the way in which the costs and the shares will be decided:

- Does the state set the cost of education throughout the state and the local-effort tax rates required to meet some stated minimum cost?
- Does the state allow local districts to determine the costs of education and balance the wealth of the local districts, such that the patrons of each district have an equal opportunity to fund their programs?

The following discussion and accompanying examples have been simplified for the purposes of clarity. All states operate with one of these formulas, and they have modified each formula extensively over the years. State aid formulas have several purposes. Formulas increase the level of revenue to nearly all school districts. The vast majority of school districts directly benefit, given the local ability to raise funds in support of public education. State aid formulas also serve the purpose of providing a degree of uniformity of revenue so as to minimize differences in the quality of public education.

Formula equalization plans attempted to reduce the varying degrees of dependence on the local ability to pay, which was thought to affect educational opportunity. State aid plans were designed to increase revenues at the local level while offering greater revenues in those districts with the least ability to assume this burden. Equalization schemes sought to achieve these goals. However, the operationalization of each scheme was technologically different, based on the political preferences and economic realities of a given state during the years in which a formula matured. Formidable political realities required resolution to three central policy concerns. These policy questions were largely settled within the political arena based on the fiscal constraints existing within each state:

(1) Whether the state should set expenditure levels and local tax rates,
(2) Whether the state should allow each district to set its own costs with corresponding aid, and

(3) Whether the state should simply set minimum expenditures that could be exceeded by local option.

While equalization schemes vary, they tend to fall into the following typology:

TABLE 1
TYPOLOGY OF EQUALIZATION PLANS CATEGORIZED BY DEGREE OF LOCAL AND STATE CONTROL*

Primary Rates Set by the State	Primary Rates Set by Local District
Minimum Foundation Programs	Resource Accessibility Programs *such as,* Percentage Equalizing Guaranteed Tax Base Guaranteed Tax Yield Power Equalizing
	and
Combination Foundation and Resource Accessibility Programs *such as* Foundation and Guaranteed Tax Base Foundation and Guaranteed Tax Yield Foundation and Flat Grant Guaranteed Tax Yield and Flat Grant Percentage Equalizing and Flat Grant	

* David C. Thompson, R. Craig Wood, and David S. Honeyman, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES (1993).

Minimum Foundation Plans

Minimum foundation plans are based on the school district's ability to pay for a minimum educational program. Early in the formation of minimum foundation plans, Strayer and Haig argued that a foundation formula should fulfill the following goals:

(1) Educational programs should be based on the wealthiest district,

(2) A minimum foundation should encourage local initiative,
(3) The plan should reward efficiency, and
(4) The plan should make districts fiscally competitive so that differences would reflect local choices rather than the effects of local ability or inability to pay.

Minimum foundation plans attracted state policy makers because such plans addressed a minimally required base expenditure that could be said to satisfy some quantity of minimum education. Such plans also provided for some degree of local control.

The formula reads: State Share = Total Costs minus Local Share. The total cost of a minimum program, minus some legislatively determined local share, leaves the state to fund the difference. Importantly, the initial tax rate and the initial expenditure per pupil are the equality factors, with the state share varying in direct proportion. Mathematically expressed, the foundation formula is:

$$S_i = (\Sigma P_i \times F_{state}) - (Val_i \times r_{state})$$

where:

S_i is the state aid to the ith district;

P_i is the number of students as calculated in the state (e.g., by ADA, ADM, weighted by FTE etc.) for the ith district;

F_{state} is the foundation dollar-per-pupil expenditure set by the state;

Val_i is the assessed valuation for the ith district; and

r_{state} is the tax rate set by the local district.

The effect of the foundation formula can also be mathematically shown. The following example (Figure 2) presents three districts with different wealth and enrollment. Using the minimum foundation concept, the state has decided a minimum educational program is satisfied when districts spend $3,600 per pupil. The second requirement is seen in the

40. Methods of calculating the number of students have historically varied among the states. Average Daily Attendance (ADA) counts an average of students in attendance. Average Daily Membership (ADM) counts students officially enrolled at some legal point in time. Full Time Equivalency (FTE) counts students for the demand on instructional time—for example, half-day kindergarten counts each student as .5 rather than as a full headcount.

state's requirement that all districts levy at least 6 mills. Districts A and B each have wealth of $200,000 per pupil, while District C's wealth is $600,000 per pupil, creating a ratio of 3:1. Multiplying the 6 mill minimum tax rate against district wealth produces the tax yield in each district, with Districts A and B each generating $1,200 per pupil ($200,000 x .006= $1,200), while District B generates $3,600 per pupil ($600,000 x .006= $3,600). This local share is then subtracted from the state minimum expenditure for state aid. Districts A and B will receive $2,400 per pupil ($3,600 - $1,200= $2,400) in state aid, while District C will receive no state aid ($3,600 - $3,600= $0) due to local wealth. These data are then multiplied by enrollment to derive total aid. If District A were to have 3,000 pupils, District B were to have 4,000 pupils, and District C were to have 3,000 pupils, the formula in each district would be calculated as follows:

District A S_a =(3,000 pupils x $3,600) - (6 mills x 3,000 pupils x $200,000)

= $10,800,000 - $3,600,000

= $7,200,000 or $2,400 per pupil

District B S_b =(4,000 pupils x $3,600) - (6 mills x 4,000 pupils x $200,000)

= $14,400,000 - $4,800,000

= $9,600,000 or $2,400 per pupil

District C S_c = (3,000 pupils x $3,600) - (6 mills x 3,000 pupils x $600,000)

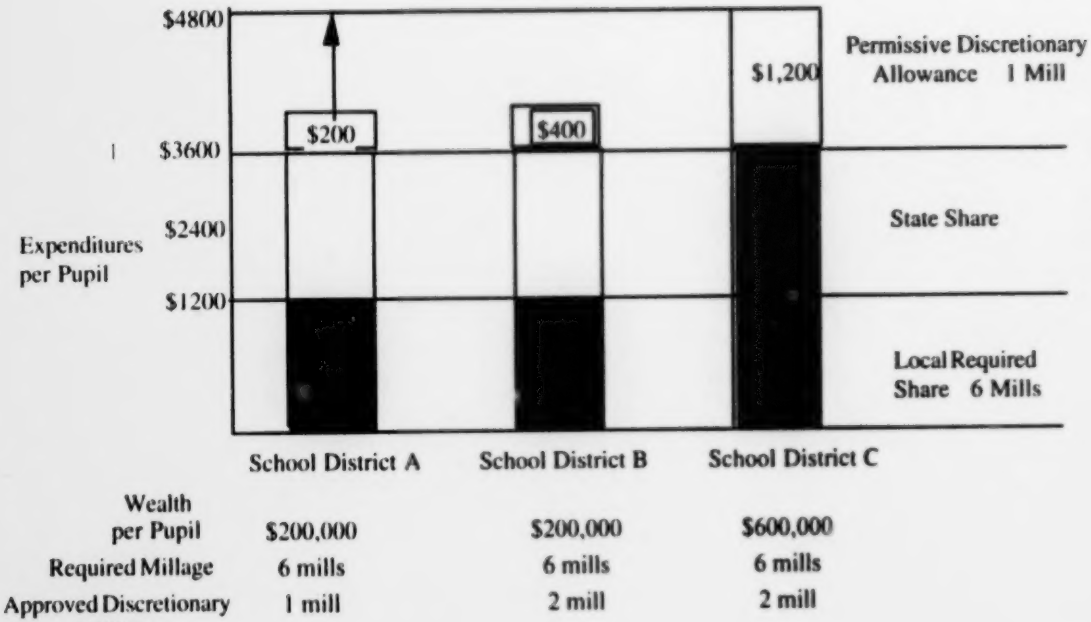
= $10,800,000 - $10,800,000

= $ 0 or $ 0 per pupil

School districts voluntarily exceeding minimum standards may create certain inequality issues. In this example, if the state permitted local discretionary millage, District C could generate additional funds with lower tax effort because each additional mill generates $600 per pupil ($600,000 x .001), compared to only $200 per pupil in either District A or B. A basic foundation formula does not equalize above the minimum tax rate. Second, if voters in poorer districts refused to approve addi-

tional millage, then that district would spend less. Third, even if poor districts approved additional tax effort, spending would still be less because the yield per mill above the minimum is not equalized.

Figure 2 reflects these inherent weaknesses of foundation formulas. The example shows that the basic foundation concept works well up to a point where it becomes incapable of reaching its original equalization aim. The formulas do work well in the lower portions of the foundation amount, with the other districts receiving aid to equalize local tax base inadequacy. In the upper third, however, discretionary millage allows District C to spend at a ratio of 3:1 for each additional mill. The problem is perplexing. If the state equalized local leeway, the scheme would no longer be a minimum foundation. If the state fails to equalize discretionary millage, it restores the inequality it first sought to eliminate. Further, if the state did not permit discretionary millage, the minimum concept is once again thwarted. The basic fact is that any unaided discretionary millage counters equalization, while denying local leeway violates minimum intent. The only other option is to limit the amount of discretionary millage, but it is clear that such a solution is only a compromise.



	School District A	School District B	School District C
Wealth per Pupil	$200,000	$200,000	$600,000
Required Millage	6 mills	6 mills	6 mills
Approved Discretionary Millage	1 mill	2 mill	2 mill

FIGURE 2
GRAPHICAL REPRESENTATION OF FOUNDATION PROGRAM SHOWING THE EFFECT OF DISCRETIONARY MILLAGE ON PER PUPIL EXPENDITURES

Despite its inherent limitations, the foundation plan has been the single most popular equalization formula, no doubt due to a variety of political and economic realities.[41]

Resource Accessibility Programs

Both foundation programs and resource accessibility plans seek to equalize education by offering aid in inverse relation to ability to pay. Yet the plans are fundamentally different. The foundation program follows a less-aggressive, minimum-provision philosophy, while resource accessibility programs focus on a more-aggressive, equal-access philosophy, or even an equal, total-provision philosophy.[42] In addition, resource accessibility programs are much more reliant on local decision making. Resource accessibility plans dictate the state share in educational costs at a level determined by the local district and focus more intensively on the end-opportunity instead of uniform effort or program. Resource accessibility formulas focus on students having equal access to resources and are less philosophically concerned about whether resources are initially uniform or even equal, as long as the opportunity to access the same moneys is available. The vehicles through which such accessibility is reached include various Percentage Equalizing (PE) plans. These formulas have been further refined to include newer variations such as a Guaranteed Tax Base (GTB), a Guaranteed Tax Yield (GTY), and a District Power Equalization (DPE).

Generally, percentage equalization concepts allow school districts to determine a cost of education that reflects local preferences. The state decides the support level to be applied equally to all districts, commonly expressed as a percentage of costs to be paid in the average district after subtracting local ability to pay. Unlike the foundation, state aid varies on two factors: the first factor varies aid on the basis of wealth, and the second factor varies aid based on local decisions with state partnership guaranteed.

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41. Modification of minimum foundation plans are frequent. Generally, the plans may be equalized to a predetermined level. The alternative is to cap the discretionary millage which is designed to apply to a certain segment, i.e., the wealthiest school districts. Such limitations are politically attractive in that there are no state moneys involved. Generally, sliding scales are utilized; i.e., for each additional mill the degree of equalization is decreased. Thus, such plans can never be fully equalized. If a state were to fully equalize each discretionary mill, the state would have adopted a resource equalization scheme.
42. This discussion can be found in JAMES GUTHRIE, WALTER GARMS, AND LAWRENCE PIERCE. SCHOOL FINANCE AND EDUCATION POLICY: ENHANCING EDUCATIONAL EFFICIENCY, EQUALITY, AND CHOICE132-133 (2d ed. 1988).

These new resource accessibility formulas were designed to distribute aid as if the tax base per pupil in every district was identical. As mentioned above, the vehicles became known as GTB and GTY formulas, with a special variation also known as DPE. The GTB is a plan that attempts to create the same tax base wealth per pupil throughout a given state. In finding the average assessed valuation per pupil for the entire state, the state determines an equally guaranteed tax base amount for every district. Such conditions instantly equalize all students. However, the features of the PE formula would remain because local districts would still determine local expenditures and set the tax rate. When these decisions are made, the district would multiply the local tax rate against the guaranteed tax base, and the state would be required to make up any difference. For example, if two districts established the same tax rate, they would be guaranteed the same expenditure per pupil. The GTB thus guarantees taxpayer equity such that each school district in the state has an equivalent capacity to generate revenue. Mathematically, the GTB is expressed as State Share = Local Tax Rate x (GTB - Local Tax Base).

The GTY formula sets a tax yield level for all property in the state. The state may set the guaranteed tax yield so that the formula provides zero aid to the wealthiest district in order to avoid recapture. Another policy option allows for setting the tax yield above the wealthiest district in order to provide aid to every school district. The last policy option is to set the yield below the wealthiest district, whereby excess revenue is recaptured. Politically, only the second option is generally available. Regardless of which option is exercised, the formula is solved so that poor districts receive the same revenue per pupil as the wealthiest district by using the same tax rate. The GTY formula is mathematically expressed as State Share = (Wealth_W x Tax Rate_W) - (Wealth_i x Tax Rate_i). In solving the formula, the revenue per pupil generated in the i^{th} district (wealth per pupil of the i^{th} district times its tax rate) is subtracted from the revenue per pupil generated in the wealthiest district (wealth per pupil of the wealthiest district W times its tax rate), with the difference yielding the state aid per pupil.

The formula for the PE, GTB, and GTY is identical and is expressed as:

State Share = Total Costs x Local share Ratio

$$S_i = (\Sigma P_i)(Exp_i) - (1 - (C \times Adj.Val_i))$$

where:

- S_i is the state aid to the *i*th district,
- P_i is the number of students as calculated in the state, ADA, ADM, weighted by FTE, etc., for the *i*th district;
- Exp_i is the dollar-per-pupil expenditure set by the *i*th district;
- C is the state share percentage factor.
- $Adj.Val_i$ is the ratio of assessed valuation per pupil for the *i*th district compared to that of the average assessed valuation for all districts.

Solving the equation requires several steps. First, the total number of pupils(P_i) is multiplied by the per-pupil dollar expenditure level (Exp_i) set by the district. To solve for the state share, (S_i), the far right parenthetical must be known wherein the adjusted valuation[43] of the school district is multiplied by the state constant (C) factor and subtracted from 1. S_i is then the sum of pupils multiplied by the district expenditure per pupil minus the product of 1 minus the constant multiplied against the assessed valuation per pupil of the district. From the state perspective, the value of C in a given year can be leveled up or down to control costs. The same three illustrative school districts would each calculate:

Average wealth per pupil of the state: $333,333
State share factor (C): 0.5

43. Districts do not provide this figure. This is the value of property in the district adjusted so that all district property is valued at a common assessment level throughout the state compared to the average adjusted value of all similar property for each district in the state, i.e., the ratio of the tax value of local property compared to the average taxable value of all property for all districts in the state.

District A

S_a =(3,000 pupils x $3,600) x (1-(0.5 x 200,000 ÷ 333,333))
= $10,800,000 x 1- .3
=$7,560,000 or $2,520 per pupil

District B

S_b =(4,000 pupils x $4,000) x (1-(O.5 x $200,000 ÷ 333,333))
= $16,000,000 x 1- .3
=$11,200,000 or $2,800 per pupil

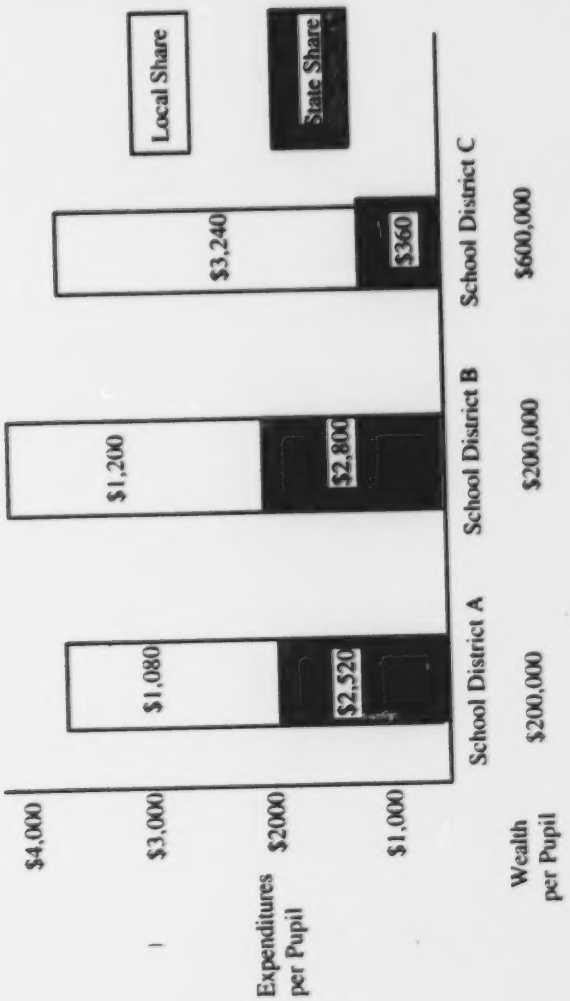
District C

S_c =(3,000 pupils x $3,600) x (1-(0.5 x $600,000 ÷ $333,333))
= $10,800,000 x 1- .9
=$1,080,000 or $360 per pupil

Aid to these districts under a resource accessibility formula is different than when a foundation formula is applied. Districts A and C have chosen to spend the same $3,600, but aid is now different. Under a foundation aid formula, District A received $2,400 per pupil while wealthier District C received nothing. Factoring in a more sensitive wealth variable and setting the state share at 50 percent adjusted for wealth, however, changes District A aid to $2,520 per pupil, and supplies District C with aid of $360 per pupil. In contrast, District B has chosen to set its expenditure even higher at $4,000. Districts A and B have equal wealth, although higher budgets per pupil will demand higher aid, but a higher tax rate has been chosen. Since all ratios are proportional, this is acceptable because the amount of state aid is adjusted according to the relative wealth of each district, with wealthy districts receiving less state aid than poor districts for equal tax effort.

Figure 3 graphs the operation of the resource equalization formula. Districts A and B have the same wealth, but District B has approved a higher expenditure level of $4,000. The state thus pays a higher share in support of District B than it does for District A, but taxpayers in District B pay approximately 11 percent more local taxes as a result ($1,200 compared to $1,080). Under these conditions, however, both strengths and weaknesses become evident. The state has shifted the responsibility of minimum program definition to local districts. However, the state potentially faces being unable to meet its share if the bulk of local districts were to set very high expenditure levels.

FIGURE 3
GRAPHICAL REPRESENTATION OF PERCENTAGE EQUALIZING PROGRAM FOR THREE SCHOOL DISTRICTS SHOWING PER PUPIL EXPENDITURES AND RESULTING LOCAL SHARE AMOUNTS



By design, District Power Equalization formulas embrace the practice of recapture. Power equalization plans require that every district with an assessed valuation greater than the state's guaranteed valuation per pupil (or some predetermined valuation) must pay back the difference to the state. A few states have adopted resource accessibility plans, but no adoption has been pure in form.

Combination Programs

Due to the inherent deficiencies of pure formulas, policy makers have combined the principles of foundation aid and equalization aid by merging one or more types of formulas hoping to secure the benefits of each. The intent, of course, is that the strengths of one plan may help offset the weaknesses of another. Certain states have mixed flat grants or foundations with some form of percentage equalization. As a general rule, one scheme provides "base" aid, while the other formula is added on to meet another policy goal.

Recently, multi-tier formulas have appeared as the deficiencies of "pure" formulas have been revealed. A common combination calls for equalization above a foundation for several reasons. The minimum provision continues to be attractive despite the advent of technically superior formulas, particularly in the context of assuring initially flat expenditures and tax rates, more uniform program quality, and local discretionary leeway. The major flaw of a foundation plan is corrected by overlaying equalization, wherein local option preserves its strength by guaranteeing equal revenues for equal effort if the choice were exercised. Practically, as well as politically, combining the strengths of certain equalization schemes is attractive. However, great care must be exercised not to combine the less desirable features of various plans, resulting in a significantly inferior overall plan.

Full State Funding Plans

Full state funding as a public policy has always possessed certain appealing features for state policy makers. Such plans place all the resources of the state within reach of every child, generally by requiring a statewide tax on the various forms of wealth. Full state funding assumes that the available fiscal resources are initially apportioned equally to every child without regard to location or wealth. There can be no local spending leeway because localities no longer factor into a statewide scheme. All revenue belongs to the state. There are no longer any locally generated moneys for education. These features make such plans significantly different from foundation plans and are counter to the preferences of those that desire local control.

Only Hawaii follows the classic full state funding model. Hawaii does not utilize a property tax in support of public elementary and secondary education. Additionally, it lacks traditional local school districts. A few other states qualify as nearly full state funded; these include California and Florida where local property tax limitations have created de facto full state funding. For example, the Florida legislature sets a range of approved local property tax rates and also determines allowable costs per pupil, with the state funding the difference. Since almost every district exercises the maximum millage, Florida effectively has full state funding.

Full state funding is the only plan that assures horizontal equity among all children of the state. Yet, despite the fact that full state funding represents a technically correct mechanism for achieving a high level of fiscal equity, the political realities of shifting decision making away from localities and to the state have effectively prevented adoption of full state funding in nearly all instances. The technology of full state funding has always exceeded its political acceptability. Consequently, full state funding opponents have always presented powerful arguments regarding the diminished involvement of local decision makers within local school districts.[44]

Overview of Distribution Formulas

Financing public education in the United States is a huge and complex undertaking. The allocation and determination of the amount of local and state revenues to be raised, shared, and expended is laden with value judgments and difficulty. Table 2 displays the most common mechanisms for the distribution of state revenues to local educational agencies. This state distribution then determines, or at least highly influences, the amount of local taxes used to support local education.

Public education finance is a dynamic and ever-changing function of every state and the value systems of society. It will continue to change, and important refinements and modifications will constantly occur. The goals of financing public education are such that taxpayers should be treated differently based on their ability to support public education.

Concurrent with this goal is the concept that where a child lives—in wealth or poverty—should not determine the quality and quantity of the educational programs offered by local public schools. By providing this equal educational opportunity, society will benefit and individuals will achieve their fullest potential.

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44. For a discussion of full state funding as it applies to Hawaii, *see, e.g.*, John A. Thompson, *Notes on the Centralization of the Funding and Governance of Education in Hawaii*, 17 J. EDUC. FIN. 286-302 (1992).

Table 2 reflects a classification scheme of present-day formulas and where they are utilized.

TABLE 2
CLASSIFICATIONS OF FORMULAS
DETERMINING STATE AID 1991[45]

ALABAMA	MODIFIED FOUNDATION
ALASKA	FOUNDATION
ARIZONA	FOUNDATION
ARKANSAS	FOUNDATION: TWO-TIERED
CALIFORNIA	FOUNDATION W/FLAT GRANT
COLORADO	MODIFIED FOUNDATION
CONNECTICUT	PERCENTAGE EQUALIZING
DELAWARE	FLAT GRANT W/EQUALIZATION
FLORIDA	FOUNDATION
GEORGIA	FOUNDATION W/GTB
HAWAII	FULL STATE FUNDING
IDAHO	MODIFIED FOUNDATION
ILLINOIS	MODIFIED FOUNDATION/ GTB W/FLAT GRANT
INDIANA	FOUNDATION W/FLAT GRANT
IOWA	FOUNDATION W/FLAT GRANT
KANSAS	PERCENTAGE EQUALIZING
KENTUCKY	FOUNDATION W/GTB
LOUISIANA	FOUNDATION
MAINE	MODIFIED FOUNDATION
MARYLAND	FOUNDATION W/FLAT GRANT
MASSACHUSETTS	PERCENTAGE EQUALIZING
MICHIGAN	GTB W/FLAT GRANT
MINNESOTA	FOUNDATION
MISSISSIPPI	FOUNDATION
MISSOURI	FOUNDATION W/GTB AND FLAT GRANT
MONTANA	FOUNDATION W/GTB
NEBRASKA	FOUNDATION
NEVADA	FOUNDATION
NEW HAMPSHIRE	FOUNDATION
NEW JERSEY	FOUNDATION
NEW MEXICO	FOUNDATION, NEAR FULL FUNDING
NEW YORK	PERCENTAGE EQUALIZING W/FLAT GRANT

45. Adapted from DAVID C. THOMPSON, R. CRAIG WOOD AND DAVID S. HONEYMAN, *supra* note 30.

NORTH CAROLINA	FLAT GRANT
NORTH DAKOTA	FOUNDATION
OHIO	FOUNDATION
OKLAHOMA	FOUNDATION W/EQUALIZATION
OREGON	FOUNDATION
PENNSYLVANIA	PERCENTAGE EQUALIZING
RHODE ISLAND	PERCENTAGE EQUALIZING
SOUTH CAROLINA	FOUNDATION
SOUTH DAKOTA	FOUNDATION
TENNESSEE	FOUNDATION
TEXAS	FOUNDATION W/GUARANTEED YIELD
UTAH	FOUNDATION
VERMONT	FOUNDATION W/FLAT GRANT
VIRGINIA	FOUNDATION
WASHINGTON	FULL STATE FUNDING
WEST VIRGINIA	FOUNDATION
WISCONSIN	GTB W/TWO TIERS
WYOMING	FOUNDATION

Formula Adjustments

Up to this point in the discussion, the assumption has been that for purposes of providing educational opportunities, all children are equal. Obviously, this is true. The first premise of state aid distribution is that for an aid scheme to merit adoption, horizontal equity must be present. However, many state aid plans provide horizontal equity imperfectly because—even if access to opportunity is accepted as necessarily equal—it is obvious that children are not equal in terms of their economic, social, or physical circumstances. Therefore, it is necessary to adjust aid formulas to consider the differences among children in the belief that elements of verticality will better lead to true horizontal equity.

The majority of education finance literature addresses vertical equity improvement as well as testing the means by which this equity can be measured. These adjustments generally involve need equalization and/or cost equalization. The traditional view reflects that need equalization most closely aligns with vertical equity adjustments or formula add-ons for programs, while cost equalization focuses on vertical adjustments for differences such as economies of scale and perceived market baskets.

Need Equalization

If all children in a school district were exactly equal in economic, social, physical, and intellectual status, state aid formulas would not

need to be concerned with vertical adjustment. However, this is not usually the case. Of particular merit in need equalization is the extreme disadvantage many children face as a result of special handicapping conditions that affect their ability to learn. States have provided additional resources in an attempt to offer these children equal footing in a competitive society. As a consequence, special efforts concentrate additional resources on three need areas: compensatory education, bilingual education, and special education.

The level of fiscal support for compensatory education varies significantly among states. A general consensus reveals poverty as the best indicator of need for compensatory services. These formulas seek to provide extra aid on the assumption that these children can benefit from more intensive services.

The concept of pupil weighting has been popular in all of the various vertical adjustments. Weighting is the determination of the amount of additional funds necessary to provide a special service. Weighting schemes are based on classifying a regular education child at a weight of 1.0, wherein the cost of a child with no special needs is defined as the uniform expenditure level for all such children. The cost of a special needs child can then be calculated as some amount greater than 1.0, where the weight will be the program's cost divided by the number of children served.

The common alternative to pupil weighting has been a system of categorical aids. These moneys are used for a special purpose such as compensatory education. Categorical aids are generally distinguished from weights by separate fund accounting and a direct relation to actual program costs. Table 3 broadly displays the compensatory education plans in place in those states that have chosen to accept special responsibility for this vertical equity question. These data illustrate a wide variation in the approaches of states.

TABLE 3
STATE METHODS OF AIDING
COMPENSATORY EDUCATION 1988*

CALIFORNIA	COSTS IN EXCESS OF REVENUE LIMIT
COLORADO	FLAT GRANT
CONNECTICUT	WEIGHTED
FLORIDA	FLAT GRANT
GEORGIA	WEIGHTED
HAWAII	FULL FUNDING
ILLINOIS	WEIGHTED
LOUISIANA	FLAT GRANT
MARYLAND	WEIGHTED
MASSACHUSETTS	WEIGHTED
MICHIGAN	VARIABLE GRANT
MINNESOTA	WEIGHTED
MISSOURI	WEIGHTED
NEBRASKA	WEIGHTED
NEW JERSEY	WEIGHTED
NEW YORK	WEIGHTED
NORTH CAROLINA	VARIABLE GRANT
OHIO	VARIABLE GRANT
OKLAHOMA	WEIGHTED
OREGON	SPECIAL GRANT ONLY
PENNSYLVANIA	VARIABLE GRANT
RHODE ISLAND	FLAT GRANT
SOUTH CAROLINA	WEIGHTED
TEXAS	WEIGHTED
UTAH	FLAT GRANT
VERMONT	WEIGHTED
VIRGINIA	FLAT GRANT
WASHINGTON	FLAT GRANT

* This table is adapted from DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES (1993).

Special Education

Vertical formula adjustments for equalizing needs are most apparent in special education provisions. Special education has existed in many states for decades, as states voluntarily provided some services to children with special physical or intellectual needs that could not be effec-

tively served in the regular classroom. As a result of case law,[46] and federal laws,[47] involving the right to an appropriate education, numerous special services have become an integral part of all state aid schemes.

As a result of the attention to special education, states have developed relatively elaborate funding mechanisms. Weighting schemes operate as described earlier, wherein each handicapping condition is usually examined to track historic cost data in order to calculate a weight above the regular education child. Excess cost reimbursement is often designed to develop similar cost data, from which states either pay such costs or reimburse a percentage of costs. A third alternative is to calculate the costs of each instructional organization and to reimburse part or all of such costs to districts. Table 4 broadly defines state plans for financing special education.

TABLE 4
STATE METHODS OF AIDING SPECIAL EDUCATION 1988*

ALABAMA	INSTRUCTIONAL UNIT
ALASKA	INSTRUCTIONAL UNIT
ARIZONA	WEIGHTED
ARKANSAS	WEIGHTED
CALIFORNIA	INSTRUCTIONAL UNIT
COLORADO	EXCESS COST
CONNECTICUT	PERCENTAGE REIMBURSEMENT
DELAWARE	WEIGHTED
FLORIDA	WEIGHTED
GEORGIA	WEIGHTED
HAWAII	FULL FUNDING
IDAHO	COMBINATION
ILLINOIS	COMBINATION
INDIANA	WEIGHTED
IOWA	WEIGHTED
KANSAS	INSTRUCTIONAL UNIT
KENTUCKY	INSTRUCTIONAL UNIT

46. *See, e.g.*, Pennsylvania Ass'n of Retarded Citizens (PARC) v. Commonwealth of Pa., 343 F. Supp. 279 (E.D. Pa. 1972) (consent decree); see also Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972) which moved the right to education beyond mentally retarded children to include a broad range of handicapped children and began the practice of forbidding exclusion of handicapped children from regular school assignment unless provided with due process.
47. Education for All Handicapped Children Act (EHA), P.L. 94-142.

LOUISIANA	INSTRUCTIONAL UNIT
MAINE	PERCENTAGE REIMBURSEMENT
MARYLAND	EXCESS COST
MASSACHUSETTS	WEIGHTED
MICHIGAN	PERCENTAGE REIMBURSEMENT
MINNESOTA	PERCENTAGE REIMBURSEMENT
MISSISSIPPI	INSTRUCTIONAL UNIT
MISSOURI	INSTRUCTIONAL UNIT
MONTANA	PERCENTAGE REIMBURSEMENT
NEBRASKA	WEIGHTED
NEVADA	FLAT GRANT
NEW HAMPSHIRE	WEIGHTED
NEW JERSEY	WEIGHTED
NEW MEXICO	WEIGHTED
NEW YORK	COMBINATION
NORTH CAROLINA	FLAT GRANT
NORTH DAKOTA	EXCESS COST
OHIO	COMBINATION
OKLAHOMA	WEIGHTED
OREGON	EXCESS COST
PENNSYLVANIA	EXCESS COST
RHODE ISLAND	EXCESS COST
SOUTH CAROLINA	WEIGHTED
SOUTH DAKOTA	PERCENTAGE REIMBURSEMENT
TENNESSEE	WEIGHTED
TEXAS	WEIGHTED
UTAH	WEIGHTED
VERMONT	COMBINATION
VIRGINIA	WEIGHTED
WASHINGTON	FLAT GRANT
WEST VIRGINIA	COMBINATION
WISCONSIN	PERCENTAGE REIMBURSEMENT
WYOMING	PERCENTAGE REIMBURSEMENT

• This table is adapted from David C. Thompson, R. Craig Wood, and David S. Honeyman, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES (1993)

Cost Equalization

Several states attempt to adjust for additional differences that may result in inequality among students. These efforts generally focus on differences in costs that occur among school districts as a consequence of economies of scale. The other common cost equalization factor considers market baskets, wherein districts are analogous to consumers in a marketplace of goods and services that may be more or less expensive according to geographic location.[48] The adjustments, largely based on a series of assumptions, are generally unsound empirical evidence to support the formulas currently in place in many states.[49]

Many states have enacted vertical formula adjustments. These adjustments are cost equalization strategies, although overlap occurs. Table 5 provides a summary of major cost equalization plans.

TABLE 5
COST EQUALIZATION SCHEMES 1988*

State	Enroll. Density/Sparsity	Decline/Increase	Grade Level
Alabama		✓	✓
Alaska	✓		✓
Arizona	✓	✓	✓
Arkansas			
California	✓	✓	✓
Colorado	✓	✓	✓
Connecticut	✓		
Delaware			✓
Florida	✓	✓	✓
Georgia	✓	✓	✓
Hawaii			
Idaho	✓	✓	✓
Illinois			✓
Indiana		✓	✓
Iowa	✓	✓	

48. *See, e.g.*, J. MICHAEL O'LOUGHLIN, R. CRAIG WOOD, AND DAVID S. HONEYMAN, A STUDY OF THE EFFECTS OF THE SPARSITY SUPPLEMENT ON THE EQUITY OF THE FLORIDA EDUCATION FINANCE PROGRAM (Paper No. 5,1992).

49. R. CRAIG WOOD, DAVID C. THOMPSON, DAVID S. HONEYMAN, AND M. DAVID MILLER, FUNDING PUBLIC EDUCATION IN MONTANA BASED ON THE CONCEPT OF COST OF LIVING INVOICES IN Montana Rural Educ. Ass'n v. State, Case No. BDV-91-2065, REPORT TO THE ATTORNEY GENERAL OF THE STATE OF MONTANA (Wood, Thompson & Associates 1992).

Kansas	✓	✓	
Kentucky	✓	✓	✓
Louisiana	✓		
Maine	✓	✓	✓
Maryland			✓
Massachusetts	✓		✓
Michigan			
Minnesota	✓		✓
Mississippi			
Missouri			✓
Montana	✓		✓
Nebraska	✓	✓	✓
Nevada	✓	✓	✓
New Hampshire			✓
New Jersey			✓
New Mexico	✓	✓	✓
New York		✓	✓
North Carolina	✓		✓
North Dakota	✓		✓
Ohio	✓	✓	
Oklahoma	✓	✓	✓
Oregon	✓	✓	✓
Pennsylvania	✓		✓
Rhode Island			
South Carolina			✓
South Dakota	✓		
Tennessee			✓
Texas	✓		
Utah	✓		
Vermont		✓	✓
Virginia			
Washington	✓	✓	✓
West Virginia			
Wisconsin			
Wyoming	✓	✓	✓

• This table is adapted from DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, FISCAL LEADERSHIP FOR SCHOOLS: CONCEPTS AND PRACTICES (1993).

Summary of State Aid Formulas

The responsibility for financing education creates a special obligation on the part of states to assure equal educational opportunity. That responsibility has resulted in increasingly sophisticated aid mechanisms that have grown to encompass horizontal and vertical equity. Progress toward more equitable aid schemes has been slowed at times by politics seeking to resist the price of improvement. In other instances, progress has been accelerated because of the political benefit to be gained from advocating such public investments. While no state has adopted a perfect aid scheme, there has been genuine movement toward the goal of equity since the early days of this century.

CHAPTER 5
MEASURING EDUCATION FINANCE EQUITY

Measuring Formula Equity

Absolute fiscal equality would not automatically result in equal quality of education. It is important to note the highly state-specific nature of education finance and the variable performance of aid mechanisms under equity examinations. Although one can suggest various options, the most realistic option is to closely scrutinize funding formulas for the purpose of making continual equity adjustments.

Measurement of equity focuses along three dimensions related to both horizontal and vertical equity. Vertical equity is extraordinarily complex so that agreement concerning measurement or achievement is not assured, and its costs are often considered prohibitive. Further, vertical equity may presume a focus on educational outcomes among unequal populations—a topic that lacks a fully developed technology for accurate measurement.[50] The bulk of equity measurement has occurred in horizontal generalities about state aid schemes along the three dimensions of resource accessibility, wealth neutrality, and tax yield. The equity performance of any state aid formula may be tested on these dimensions using a set of common statistical tools.[51]

Resource Accessibility[52]

Resource accessibility is primarily concerned with determining whether all students have equal access to a given resource pool. Reality, however, suggests the unlikelihood of a smooth distribution of wealth. The task of determining resource accessibility is one of measuring degrees of noncompliance. In most states, this means comparing the level of resources among districts to the relative achievement of equity among all districts of a given state.

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50. The measurement of vertical equity is beyond the scope of this paper. Other more detailed sources are available; *see, e.g.*, ROBERT BERNE AND LEANNA STIEFEL, THE MEASUREMENT OF EQUITY IN SCHOOL FINANCE: CONCEPTUAL, METHODOLOGICAL, AND EMPIRICAL DIMENSIONS (1984).
51. The statistical tools presented should not be presumed to be a complete list.
52. This discussion of resource accessibility is adapted from DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID S. HONEYMAN, *supra* note 30. *See also*, DAVID S. HONEYMAN, M. DAVID MILLER, R. CRAIG WOOD, AND DAVID C. THOMPSON, THE STUDY OF RESOURCE ACCESSIBILITY, WEALTH NEUTRALITY, AND STATE YIELD IN Montana Rural Educ. Ass'n v. State, Case No. BDV-91-2065, REPORT TO THE ATTORNEY GENERAL OF THE STATE OF MONTANA (1992).

Several measurements of equity are utilized to evaluate resource accessibility, including mean, range, variance, restricted range, federal range ratio, standard deviation, and coefficient of variation. These statistical tests are usually applied by group to a number of variables that represent items such as budgets, expenditures, wealth, budget surplus, and tax millage for each district in a distribution. The groups in these analyses can be selected to represent any number of comparisons. For example, an analysis might examine all districts or only large or small districts. Similarly, the analysis might select groups of large and small districts for specific comparison purposes.

Mean

Generally, the mean is the first observation in considering resource accessibility. It is a measure of the central tendency of the distribution of observations; in other words, the mean represents the average value in the distribution of a variable. The mean takes into account all the observations in the distribution and is calculated by the formula (Σ Xi ÷ N), where Σ is the sum of all districts, Xi is the value of a given variable in district i, and N is the number of districts. Solving this formula yields a single number for comparison purposes. For example, if the wealth of all districts in a state was computed and divided by the number of districts, the mean wealth would be known. School districts can then be compared to the mean for a crude estimation of variation. While the mean alone does not yield evidence about resource accessibility, it does assess wealth variation due to wide deviation from the mean unredressed by the state aid formula. Thus, this finding could suggest inequity; often this inequity is expressed as the mean differences in per-pupil dollar amounts.

Range

The range is the difference between the highest and lowest observations in a distribution. The smaller the value of the range, the smaller the variation in the distribution of a variable; likewise, the smaller the variation, the better the equity of the distribution. The range is found by the formula (Highest Xi - Lowest Xi), where Xi is the variable considered in district i. Solving the formula yields a single number for the entire distribution. The usefulness of the range is limited because it is based on only two values, does not show patterns of variation, and is not sensitive to changes in the distribution. Nevertheless, it is a useful tool for raw wealth measurement in that a wide range unredressed by the aid formula could suggest inequity.

Restricted Range

The restricted range is defined as the difference between the observation at the 95th and 5th percentiles of the distribution. It eliminates the effect of extreme values that can misrepresent a distribution. The difference is found in that the restricted range eliminates all values below the 5th percentile and above the 95th percentile. The restricted range is calculated by the formula (Xi at 95th percentile - Xi at 5th percentile), where Xi is the variable considered in district i. Solving this formula yields a single number for the distribution. A very different picture is thus obtained in which extremely wealthy and poor districts at the top 5% and bottom 5% of the state may distort the total picture. As restricted range decreases, equity increases. Restricted range is helpful in reducing the distortion of a few extreme school districts.

Federal Range Ratio

The federal range ratio is the restricted range divided by the revenue per pupil per district at the 5th percentile. The federal range ratio is calculated as (Restricted Range ÷ Xi at 5th percentile), where Xi is the revenue per pupil in district i. Solving the formula yields a value expressed as a ratio wherein the smaller the value, the less variation or inequity in distribution. This number is primarily useful as an alternative expression of relative equity achievement and is subject to the same usage as the restricted range due to the fact that it is based on that measure.

Variance

The variance is defined as the average of the squared deviations from the mean as calculated by the formula $[\Sigma Pi\ (Xp - Xi)^2 \div \Sigma Pi]$, where Σ is the sum of pupils in all districts, Pi is the number of students in district i, Xp is the mean of some tested variable for all pupils, and Xi is the same variable in district i. When the results of the formula are obtained, the smaller the variance, the smaller the variation in the distribution of a given variable—hence, greater equity. Although the variance has no value in descriptive statistics, it is crucial in inferential analysis in that it permits testing for significant differences between groups. For example, one party in an education finance lawsuit might seek to test if mean revenues of plaintiff and nonplaintiff districts were statistically different based on some legitimate criterion such as district wealth variables. Under these conditions, analysis of variance could be used to infer various properties to the state aid scheme.

Standard Deviation

The standard deviation is the square root of the variance as calculated by the formula $[\sqrt{(\Sigma Pi\ (Xp - Xi)^2 \div \Sigma Pi)}]$. The smaller the calculated

value, the smaller the variation in the distribution of revenues per pupil, and consequently, the greater the equity. The standard deviation is based on assumptions concerning normal distributions in a bell curve, and therefore, may be instructive concerning how an education finance formula affects various groups. For example, examination of a state aid formula might reveal that medium-size school districts received less revenue than all other districts and that these revenues were more than a standard deviation below the mean. Under these conditions, additional questions could arise about whether these districts are underfunded. The advantage of the standard deviation is that all observations are included in the calculation and the units of measurement are in the original scale. However, it is sensitive to outliers that could skew the distribution.

Coefficient of Variation

This measure is the standard deviation divided by the mean, or the square root of the variance divided by the mean. The coefficient of variation is expressed as the ratio of the standard deviation of the distribution to the mean of the distribution, calculated by the formula $[\sqrt{(\Sigma Pi (Xp - Xi)^2 \div \Sigma Pi) \div Xp}]$, where Xp is the mean of some variable for all districts. Solving the formula typically yields a single value between 0 and 1, wherein smaller values demonstrate smaller variations in the distribution, thereby indicating greater equity. While many uses of the coefficient of variation can be found, one example could compare differences in expenditure levels among districts in a state aid scheme that uses economies of scale as a basis for different levels of expenditure per-pupil authority. For statistical purposes, the coefficient of variation can be important when sensitivity to outliers, but not to changes in scale, is required.

Such formulas for determining resource accessibility are important because equal access to resources is an obvious precondition of equal educational opportunity. It is equally important to go beyond resource accessibility to determine whether differences are related to variations in wealth or whether other explanations are possible.

Correlation

Simple correlation is a statistical technique that describes the degree to which two variables are associated with each other. For example, the two variables of wealth of school districts and expenditures per pupil could be examined for possible association. When these two variables are examined, the result is perceived as a description of the fiscal neutrality of a state aid formula. Correlation and regression analysis test these variables to confirm or deny a state's contention that the formula is fis-

cally neutral. If the formula were indeed neutral, analysis would indicate no relationship between local wealth and revenue per pupil.

Based on the types of variables in question, several correlation procedures are possible. For most purposes, the Pearson correlation coefficient is the appropriate tool and is calculated as $\Sigma[Pi(Xi - X)(Wi - W)] \div [\sqrt{\Sigma [Pi(Xi - X)^2]}][\sqrt{\Sigma [Pi(Wi - W)^2]}]$. If the example of correlating wealth and expenditures were the object of inquiry, the formula would be as follows: Σ is the sum of pupils in all districts, Pi is the number of pupils in district i, Xi is the expenditure per pupil in district i, X is the mean expenditure per pupil for all districts, Wi is the wealth per pupil in district i, and W is the mean wealth per pupil for all districts. The correlation coefficient would then yield a value ranging from -1.0 to +1.0. When two variables are positively associated, larger values of one tend to be accompanied by larger values of the other; conversely, if two variables were negatively related, larger values in one tend to be accompanied by smaller values of the other. A value of +1.0 indicates a perfect positive linear relationship and a value of -1.0 a perfect negative linear relationship, while a value of 0 indicates no relationship. As a measure of fiscal neutrality, a correlation coefficient of 0 would indicate no wealth-to-expenditure relationship. Generally, inference about causation is also accessible through accompanying regression analysis, wherein the square of the correlation coefficient explains the amount of change in one variable caused by the other.

These tests yield a set of observations about the equity of an education finance formula. The objective is to gain accurate conclusions about a state's aid scheme regarding the three dimensions of resource accessibility, wealth neutrality, and tax yield. Under these conditions, a formula should yield proof that resources are equally available to all children, that variations in resources are not related to local wealth patterns, and that equal tax yield follows from equal tax effort.

CHAPTER 6
BASIS FOR EDUCATION FINANCE CHALLENGES

Philosophical Basis for Education Finance Challenges

Education finance research considers two different types of equity. During the formative years of education finance, the prevalent concept was primarily horizontal equity. In ideal terms, such equity means an equal tax burden in order to have equal expenditures per pupil for equal educational programs. This idealistic approach assumes that students and taxpayers are equal in circumstances and abilities.

Later, a number of researchers advanced this concept of equity to a more demanding and realistic standard.[53] The new standard claimed that children are not equal; therefore, they must be treated unequally in order for equality to result. In essence, each student should have an opportunity in kind and quality of educational programs that would best meet individual needs. Thus, students could be classified on the basis of needs, and these unequal needs could be treated unequally if the objective were one of equity.

Such distributions become complex as value judgments enter into determinations. Essentially, three basic questions usually emerge in such discussions:

(1) For whom is the distribution equitable?
(2) What resources should be equitably distributed? and
(3) How should these resources be distributed?[54]

Berne and Stiefel noted that these conceptual questions were difficult to adequately address for all parties. They acknowledged that equity considerations must be applied to both students and taxpayers. The distribution must include educational services, resources, quality of educational staffs, support materials, and other significant educational inputs. The last question of how the fiscal resources should be distributed involves both horizontal and vertical equity.

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53. *See, e.g.*, ARTHUR E. WISE, RICH SCHOOLS, POOR SCHOOLS 143-159 (1969); R. L. JOHNS AND EDGAR L. MORPHET, FINANCING THE PUBLIC SCHOOLS (1960); and CHARLES S. BENSON, THE CHEERFUL PROSPECT: A STATEMENT OF THE FUTURE OF PUBLIC EDUCATION (1965).
54. *See, e.g.*, ROBERT BERNE AND LEANNA STIEFEL, *supra* note 50.

Traditionally, equity studies emphasize equity considerations for taxpayers and students. Thus, taxpayers in identical situations should theoretically pay identical amounts of taxes to support public education. Taxpayers in different situations should thus pay differing amounts in support of public education. Additionally, tax plans must be judged as to the *ex post* or *ex ante* equity concept. The difference between the two involves what is being examined. *Ex ante* examinations investigate the characteristics of an education finance formula. *Ex post* equity examinations assess the spending patterns resulting from such finance formulas.

While being formulated, a public education finance system is by definition *ex ante* because it is an attempt to create a scenario by which equal tax rates result in equal spending. These characteristics would be ascertained prior to the implementation of the plan. When the examination is after the plan has been implemented, the equity methodology is *ex post*. An examination of the actual spending patterns would then be ascertained.[55]

When equity issues are examined for children, the concept of educational opportunity arises. It can be argued that all funds expended for a child's education must be included in this examination. Realistically, general fund expenses taken from state and local sources are most commonly utilized in these examinations for a variety of reasons. Studies may examine either student input measures such as revenues and expenditures or student output measures such as standardized test scores. Due to lack of consensus and comparability of student performance measures, student input data are most commonly utilized. In this manner, it is assumed that such inputs will offer the same opportunities to children. The logic is that the moral and legal requirements assume equal opportunities, not a guarantee of equal achievement by the various segments of society.

The dilemma that education finance researchers must address concerns the inherent conflict between horizontal and vertical equity considerations. If per-pupil expenditures were in fact perfectly equal, then certain students would not be served. That is, equity can only be achieved in relationship to students' needs. Consequently, expenditures must be in relationship to special needs. Additional funds must be accounted for by categories or other mechanisms to differentiate among all students. Thus, an equitable system would not be a system which reflected the

55. The concepts of *ex post* and *ex ante* are discussed in greater detail in L. S. Friedman and M. Wiseman, *Understanding the Equity Consequences of School-Finance Reform*, 48 HARV. EDUC. REV. 193-226 (1978); and Robert Berne and Leanna Stiefel, *Taxpayer Equity in School Finance Reform: The School Finance and the Public Finance Perspectives*, 5 J. EDUC. FIN. 36-54 (1979).

same expenditures per pupil. This difficulty becomes almost insurmountable in that there is a lack of agreement about how to solve this situation as well as a lack of data on which to base reasonable decisions.

Overall, research on the relationship of moneys expended and student achievement reveals mixed results. The basic research suggests that there is only a minimal relationship between expenditures and student achievement. However, those moneys spent on direct instructional activities yield the most positive relationship between student outcomes and moneys expended. Stated in another fashion, the amount of moneys spent beyond a given point is not as important as what the moneys are spent on.[56]

Plaintiffs counter that this is the point: the districts in question with limited resources cannot generate enough moneys for the basic programs, much less those moneys necessary to meet specialized eductional needs. Defendants often emphasize the argument that spending additional monies does not make any significant difference in education. If, in fact, that were the case, then the state could easily level down to equalize among all the school districts.

Specific state studies have generally been consistent with the relationship of moneys and quality educational systems. For example, those districts that have greater expenditures per pupil exhibit lower teacher/pupil ratios, more support and administrative services, higher-paid and better-trained teachers, and most importantly, they exhibit greater spending on direct instructional activities.[57] These are the specific traits identified with student performance.

Further, research reveals that moneys spent specifically on basic instructional aids are highly and positively correlated with standardized test scores. In fact, certain studies illustrate that these relationships are linear in nature in that the more moneys expended, the higher the standardized test scores.[58] In summation, however, moneys spent in a non-specific manner do not seem to produce significant differences in student achievement. However, when moneys are available to school districts and when school districts expend moneys on direct instructional services,

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56. *See, e.g.*, G. V. Glass, *Primary, Secondary, and Meta-Analysis of Research*, 5 EDUC. RESEARCHER 3 (1976); T. S. Childs and Charol Shakeshaft, *A Meta-Analysis of Research on the Relationship Between Educational Expenditure and Student Achievement*, 12 J. EDUC. FIN. 249 (1986).
57. *See, e.g.*, William T. Hartman, *District Spending Disparities: What Do the Dollars Buy?* 13 J. EDUC. FIN. 436 (1988).
58. *See* C. M. S. Lee, I. W. Aron and R. H. Aron, *An Analysis of Michigan Educational Assessment Program (MEAP) Scores and School Districts Revenues and Expenditures*, 13 J. EDUC. FIN. 496 (1988).

then these moneys do seem to produce improved student learning as measured by standardized achievement tests.

Constitutional Issues and Logic

Since *San Antonio v. Rodriguez*[59] plaintiffs have used a variety of attacks on state systems of finance distributions. Because *Rodriguez* prevented any effective federal challenge along these lines, plaintiffs have focused on the state courts. Plaintiffs often argue that disparities of educational opportunity cannot further a state's interest. They also argue that the educational opportunities of some groups of students are so disparate that they are beyond any reasonable scheme of classification by a state. Notwithstanding this burden, plaintiffs may be able to pursue relief in some remedial context that serves the same purpose.[60]

Generally, school districts with high assessed valuations can raise greater sums of moneys than those school districts with lower assessed valuations. Thus, an equity problem occurs. In fact, there may be a correlation between expenditures and assessed valuation. However, as previously noted, local boards of education are prevented from unilateral extension beyond state-imposed tax limits. As a result, the question becomes one of whether these students are denied equal educational opportunities, generally measured by programmatic offerings, as a result of the state distribution formula.

Currently, plaintiffs often base their claims on the language of the state constitution. Generally, these claims argue that the state constitution requires a minimal standard which is not being met or that the existence of vast funding disparities denies the plaintiffs' equal protection. Generally, present state challenges based on equal protection may meet with strict or rational basis interpretations.[61] These equal protection challenges tend to focus on education as a fundamental right under the specific controlling language of the applicable state constitution.[62] Recently, plaintiffs successfully overturned a 1956 amendment to the Alabama Constitution as having been initially designed for the purposes

59. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, *reh'g denied*, 411 U.S. 959 (1973).
60. This point is addressed in Kent Roach, *The Limits of Corrective Justice and the Potential of Equity in Constitutional Remedies*, 33 ARIZ. L. REV. 859-905 (1991).
61. While this strategy is true, two cases held that education was a fundamental right, but choose to apply a rational basis test: Kukor v. Grover, 436 N.W. 2d 568 (Wis. 1989); Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973).
62. The approach used in Mississippi is an exception to this strategy. However, other strategies for the plaintiffs are available and significantly more fruitful.

of maintaining a segregated public elementary and secondary school system.[63]

The states of Arizona, California, Connecticut, Kentucky, Montana, West Virginia, Wisconsin, and Wyoming have declared that education is a fundamental right under the state constitution. States which have declared that education is not a fundamental constitutional right include Arkansas, Georgia, Idaho, Michigan, New Jersey, New York, Ohio, Oregon, and Pennsylvania. Simply because education is discussed with a high degree of specificity does not mean that education is a fundamental right. However, it is important to realize that education can clearly be a fundamental right under a state constitutional provision, but not under the Federal Constitution. Or, depending upon the subject matter, courts can rule that state equal protection clauses are identical to the Federal Constitution under the Fourteenth Amendment and must be tested by the same standards. Despite these contrasting intricacies, it has been suggested that equal protection claims could be made in the federal courts if plaintiffs could demonstrate a lack of legitimate purpose. For example, it is conceivable that courts may be led to see that state interest in local control contributes to funding disparities and this action is contrary to state interests.[64]

Additionally, the actual results of state distributions schemes test the meaning of specific constitutional language. For example, What is the mandate? Does the state meet the mandate? And how is the mandate to be met? Disparities may not reflect the language of the constitution in terms of "thoroughness" or "efficiency" or some other state-specific controlling language such as uniformity, generality, and so on.[65] Within these issues, the arguments of rational or strict scrutiny under the state constitution can be applied.[66] Further, state-controlling language may include constitutional statements of purpose, which may assist the plaintiffs in terms of the goals and aspirations of the founders of the state

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63. For an excellent discussion of this see *School Finance Litigation in Alabama*, 72 EDUC. L. REP. (West) 691 (April 23, 1992).
64. Julie Underwood and Deborah Verstegen, *School Finance Challenges in Federal Courts, in* THE IMPACTS OF LITIGATION AND LEGISLATION ON PUBLIC SCHOOL FINANCE 187 (Julie Underwood and Deborah Verstegen eds. 1990).
65. This logic can also be found in M. Jaffe and K. Kersch, *Guaranteeing a State Right to Quality Education: The Judicial-Political Dialogue in New Jersey*, 20 J. L. & EDUC. 271-300, 276 (1991).
66. *See, e.g.*, Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989); and Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989). To date, no state supreme court has applied an intermediate scrutiny standard. In Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758, at 788 (Md. 1983), the court noted that the state of Maryland would successfully withstand such an examination, yet the court upheld the system based on a rational basis standard.

constitution. However, some states have fairly explicit purpose statements. Yet, plaintiffs may argue that other duties are not described in as simple a manner because the purpose statement is unique and distinctive within the state constitution, an elaboration which reveals the fundamentality of the issue.[67]

67. *See, e.g.*, the purpose statement in the Indiana Constitution.

CHAPTER 7
EARLY EDUCATION FINANCE LITIGATION

Early State Cases

The first state during the modern era to strike down the state's education finance formula was California, in *Serrano v. Priest* in 1971.[68] The California Supreme Court reversed a superior court judgment and ruled that the methodology for the distribution of state moneys could not be a function of local property wealth. The standard of wealth neutrality was upheld by the state supreme court. At the trial court, the plaintiffs contended that the California methodology for aiding public school districts violated the Equal Protection Clause of the federal and state constitutions. They contended that this was "because the amount of money spent per pupil varies from one district to another according to the wealth of a pupil's parents and the district in which he resides, not according to his educational needs."[69] The plaintiffs argued that the Equal Protection Clause dictated that the amount of moneys expended per pupil could not be dependent upon the wealth of the local school district. Further, they argued that the only reasonable expenditure differences were those related to the differences in the educational needs of the pupils. The trial court ruled on behalf of the state, noting that the Equal Protection Clause did not "require that the school system be uniform as to quality of education or money spent per pupil."[70] The plaintiffs appealed to the state supreme court in 1971. The court reversed the trial court's decision, noting that heavy reliance on local property wealth and taxes invidiously discriminated against the poor and thus violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution, as well as that of the California Constitution. It should be noted that in the original finance formula, the California methodology distributed moneys on a uniform per-pupil basis for all districts regardless of wealth. Graphic data revealed the disparity between Beverly Hills and the poorer, contiguous school districts. For example, Beverly Hills expended $1,232 per pupil with a tax rate of $2.38; another school district within the same geographical area spent $577 per pupil with a tax rate of $5.48. State aid decreased the gap a small amount, with a $125

68. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).
69. *Serrano*, 89 Cal. Rptr. 345 at 348 (Cal. 1970).
70. *Id.* at 350.

per-pupil foundational grant to Beverly Hills while the other district received $307 per pupil. Nonetheless, there was a disparity in per pupil funding between these two districts of $450.

In this case, the court found that education was a fundamental interest. Traditionally, fundamental interests of our society reflect those issues that are understood as being so essential to individual interests that the actions of governmental agencies should be reviewed with heightened scrutiny. Conversely, if the court deemed a rational basis test was appropriate, then the actions of governmental agencies are presumed valid; in such an instance, the governmental agenda must only demonstrate a legitimate interest and a rationally related means to meet that interest. Consequently, in this case, the elevated status of a suspect classification was the proper test of application. The court was persuaded that individuals must be educated in order to pursue the rights that are explicitly guaranteed to them in the constitution, such as voting, free speech, and religious freedom. Thus, unless the state could argue some form of a compelling interest, the state could not discriminate in terms of the quality of educational services offered to students based on the wealth, or lack thereof, in the school districts of the state.

In 1976, the California Supreme Court reviewed this issue again in *Serrano II*[71] in light of the Supreme Court's decision in *Rodriguez* and due to charges that the issues leading to the first suit had not been resolved by the state legislature. The court relied on state constitutional grounds in upholding its previous decision. Additionally, the court accepted a cost-quality relationship when it opined that "equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning."[72] Thus, in *Serrano II*, the court outlined a manageable standard that may still prove persuasive to other state courts in the future. The grounds of fiscal neutrality and the discussion of cost-quality relationships serve as one manageable standard in assessing distribution formulas.[73]

Equity evaluations common to education finance assessments involve the concept of wealth neutrality. Wealth neutrality is the concept by which each school district's funding is dependent only upon the district's efforts, totally independent of its wealth or ability to pay.[74] Operational-

71. Serrano v. Priest, 557 P. 2d 929 (Cal. 1976) [hereinafter *Serrano II*].
72. *Id.* at 939.
73. For a discussion of the remedies as they specifically apply to California see *Remedies in School Finance Equity Litigation*, 36 EDUC. L. REP. (West) 1-6 (1987).
74. S. J. CARROLL, THE SEARCH FOR EQUITY IN SCHOOL FINANCE RESULTS FROM FIVE STATES 23 (1979).

ly, this concept may be described as each school district being able, via the distribution formula, to obtain the same revenues per weighted pupil, provided that each school district makes the same fiscal effort.

In *Serrano III*,[75] the California Supreme Court refined its previous decisions by allowing that special needs programs should not be considered when examining wealth-related disparities. In this instance, the court again provided persuasive logic to other state courts when it focused on vertical equity considerations in measuring disparities. The court concluded that the state distribution formula could legitimately fund special categories at different levels.

The first education finance distribution case in Minnesota appeared in *Van Dusartz v. Hatfield.*[76] The United States District Court in Minnesota ruled that the finance system was unconstitutional. The court embraced the logic found in *Serrano I* when it concluded that education was a fundamental interest under the Equal Protection Clause of the Fourteenth Amendment. Thus, the proper standard or test would be one of strict scrutiny, since district wealth would consequently be recognized in this instance as a suspect classification. The court noted that the distribution formula was state-created.[77] The court stated that spending for a child's education could not be a function of wealth other than the wealth of the entire state. This standard was identified by the court as fiscal neutrality. The court noted that the doctrine of fiscal neutrality would not allow discrimination based on wealth and that the state was free to allow local effort and choice. Further, this concept would still allow the state to design a formula that did not violate the concept of equal protection. Evidence was presented showing that relatively wealthier districts enjoyed lower tax rates while exhibiting higher spending patterns. Specifically, plaintiffs presented statistical data whereby poorer districts would have to tax themselves with 300% increases to equal the expenditure patterns of certain wealthier school districts. The federal district court noted the following observations concerning the correlation between expenditures and quality of education:

75. 569 P.2d 1303 (Cal. 1977).
76. 334 F. Supp 870 (D. Minn. 1971).
77. Despite similar factual situations *c.f.* Sweetwater County Planning Comm. v. Hinkle, 491 P.2d 1234 (1971); *juris. relinquished*, 493 P.2d 1050 (1972).

> While the correlation between expenditure per pupil and the quality of education may be open to argument, the court must assume here that it is high. To do otherwise would be to hold that in those wealthy districts where the per pupil expenditure is higher than some real or imaginary norm, the school boards are merely wasting the taxpayers' money. The court is not willing to so hold, absent some strong evidence. Even those who staunchly advocate that the disparities here complained of are the result of local control and that such control and taxation with the resulting inequality should be maintained would not be willing to concede that such local autonomy results in waste or inefficiency.[78]

In *Hargrave v. Kirk*,[79] the United States District Court, Middle District of Florida, ruled that poorer counties in Florida were prevented from providing an educational equal to wealthier counties. The trial court opined, "[w]hat apparently is arcane to the defendants is lucid to us—that the Act prevents the poor counties from providing from their own taxes the same support for public education which the wealthy counties are able to provide."[80] Later, the finding was vacated by the supreme court, which noted that another case had been filed attacking the formula on state constitutional grounds. The defendant argued that the finance formula was merely one aspect of the comprehensive legislation concerning education financing throughout the state. Thus, the court should wait for the factual record to be fully developed in the other case because it could be critical to the decision of the equal protection claim. The case was then vacated and remanded in order to have the factual record fully developed. Before this new case was completed, the decision in *Serrano I* was issued.[81]

Parker v. Mandel[82] offers insight from the state of Maryland regarding several early strategies. The court's judgment significantly differed from the logic of the courts in California and Minnesota. The first strategic issue was whether the plaintiffs' actions should be dismissed by

78. Van Dusartz v. Hatfield, 334 F. Supp. 870 at 874 (D. Minn. 1971).
79. Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated and remanded on other grounds sub. nom.*, Askew v. Hargrave, 401 U.S. 476 (1971).
80. *Hargrave*, 313 F. Supp. at 947.
81. Askew v. Hargrave, *vacated on other grounds sub. nom.*, 401 U.S. 475, 91 S. Ct. 856 (1971).
82. Parker v. Mandel, 344 F. Supp. 1068 (D. Md. 1972).

the provisions of the Eleventh Amendment.[83] The defendants also argued that the issue before the court was essentially a political issue rather than an issue that could be adjudicated. The court dismissed this defense, noting that the issue was to be decided by state courts rather than the federal courts. Further, the court rejected the concept that the issue was essentially a political one when it noted that it did not involve equal branches of government.

Further, the court denied that education was a fundamental interest and that the lack of equal education opportunities was a suspect classification. The court stated:

> Few if any guidelines have been suggested by the Supreme Court for determining whether a claimed violation of the equal protection clause should be considered under the strict scrutiny test or under the reasonable basis test. A high degree of subjectivity would appear to be involved in determining whether a subject is to be termed a fundamental interest or whether the classification is to be called suspect.[84]

Further, the court dismissed the argument that education was a fundamental interest as defined by the Equal Protection Clause of the Fourteenth Amendment. The court opined:

> To hold that the strict scrutiny test applies to legislation of this sort would be to render automatically suspect every statutory classification made by state legislatures in dealing with matters which today occupy a substantial portion of their time and attention. If the test which plaintiffs seek to apply is the appropriate standard here, then a state, on each occasion that a similar Fourteenth Amendment attack were made against a statute dealing with health, education or welfare, would be required to bear the burden of proving the existence of a compelling state interest. This Court cannot conclude that state legislatures are to be straitjacketed by such recently evolved constitutional theory in areas that have traditionally been the exclusive concern of the state.[85]

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83. The Eleventh Amendment states, "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."
84. *Parker*, 344 F. Supp. at 1076.
85. *Id.* at 1079.

In 1973, the United States Supreme Court, in a five-to-four vote, ruled in *San Antonio v. Rodriguez*[86] to uphold the Texas education finance scheme. The Supreme Court ruled, although the distribution formula was certainly flawed, that the Texas education finance system permitted and encouraged local control of schools as a valid public policy. Further, it held that the finance system was not disadvantageous to any suspect class, that education was not a fundamental right,[87] and that the finance system did not violate the Equal Protection Clause of the Fourteenth Amendment.

The Court, rejecting the fundamentality arguments, ruled:

> Thus, the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education as opposed to subsistence or housing. Nor is it to be found by weighing whether education is as important as the right to travel. Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.
>
> Education, of course, is not among the rights afforded explicitly protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.... [T]he undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.[88]

The Court also clearly denied the argument that there was a clear nexus between education and other fundamental rights. The Court noted that the United States Constitution guarantees only the lack of governmental intrusion into individuals' lives.[89] The plaintiffs claimed that equal educational opportunity is enabling; that is, education creates an opportunity chain. Howe described the concept when he wrote:

> Education is, no doubt, valuable in its own right, but it also is enabling in the sense that it serves (however imperfectly) as the gateway for obtaining other societal goods, such as desirable employment, adequate income, and political power. For this reason, equal educational opportunity is related to equal

86. *Rodriguez*, 411 U. S. 1, 93 S. Ct. 1278, *reh'g denied*, 411 U.S. 959 (1973).
87. *Rodriguez*, 411 U.S. at 35.
88. *Id.* at 33-35.
89. *Id.* at 35.
90. Howe, *Liberal Democracy*, at 460.

> opportunity more generally because it serves as an important link in what might be termed an opportunity chain. Accordingly, the strength of the educational link determines the overall strength of the opportunity chain in the sense that the array of opportunities open to an individual is (again, imperfectly) determined by the quality of his or her education.[90]

Despite this denial of the validity of the opportunity chain concept and the resultant limitations, plaintiffs in such suits may have other avenues available to them in federal courts as discussed herein.

The original suit in *Rodriguez*[91] was filed on behalf of children who resided in property-poor school districts. The suit was filed during the time that *Serrano I* was under adjudication in the California judicial system. The bulk of arguments before the United States District Court, Western District of Texas, were very similar to those presented in *Serrano I*. Plaintiffs contended that the current Texas finance distribution formula harmed poor children. This harm was due to their contention that education was a fundamental interest. Further, they argued that the distribution formula discriminated against poor school districts.

The plaintiffs presented an array of data which reflected the vast differences in potential and real revenues between wealthy and poor school districts. Based on survey research, the plaintiffs were able to show that selected wealthy school districts were able to yield local levies of $585 per pupil, while the highest of the select sample of poor districts yielded only $60 per pupil in local revenues. Data also reflected that the wealthiest school districts exhibited very high socioeconomic data compared to the poorest school districts of the state. Specific data reflected median family incomes in the relatively wealthy school districts that were nearly twice those of poor school districts. The market value of taxable property per pupil between the two districts ranged from $5,429 to $45,095. Further data revealed that the wealthiest school district had to levy only $21 per pupil, while the poorest school district had to levy $307 per pupil. Further, these two school districts received $231 and $543 in state aid, with the larger amount going to the wealthier school district.

The Texas trial court ruled that the distribution formula did discriminate by allowing property-rich school districts to provide higher-quality education while maintaining lower tax rates. The trial court also noted that education was a fundamental right. Since the state of Texas could not show a rational basis for its system, the court ruled that a new sys-

91. Rodriguez v. San Antonio Indep. Sch. Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

tem would have to be created. However, the court noted the difficulties and resultant discrepancies created via a system of financing public education because ad valorem taxes differed significantly from one district to another. Specifically, the trial court stated the following:

> Not only are defendants unable to demonstrate compelling state interest for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications. They urge the advantages of the present system in granting decision-making power to individual districts, and in permitting local parents to determine how much they desire to spend on their children's schooling. However, they lose sight of the fact that the state has, in truth and in fact, limited the choice of financing by guaranteeing that some districts will spend low (with high taxes) while others will spend high (with low taxes).[92]

On appeal, in 1973, the United States Supreme Court overturned the trial court by ruling that the Texas distribution system did not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The Court focused its analysis on whether a heightened scrutiny should be applied in this instance. The Court found that such a standard was not applicable, inasmuch as poverty was not a suspect classification.[93] Thus, without use of the heightened scrutiny standard, the Court could rely on the standard of rational relationship. This would prove to be the standard by which the state could defend the system against the argument that distribution formula met a legitimate state purpose through the manner in which funds were distributed. The Court stated:

> We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicit or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgment of the District Court should be affirmed. If not, the Texas scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not

92. *Rodriguez*, 377 F. Supp. at 284.
93. For a discussion of the legal issues involving the poor, *see* Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L. J. 1-61 (1987).

> constitute an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment.[94]

The Court examined the issue of discrimination against the poor. In order to establish the fact that a class of individuals is economically discriminated against, it must be established that those affected are unable to pay for the benefit in question. Thus, the class must sustain an absolute deprivation of an opportunity that others enjoy. The Court found that this situation did not exist in the state of Texas. The Court noted that the poor also lived in wealthy school districts. Further, in no school district could it be argued that the poor were not receiving an education. Thus, the Court noted that the argument was one of relative deprivation of those students who resided in property-poor school districts. The Court ruled that the Equal Protection Clause did not require "absolute equality of precisely equal advantages." Specifically, the Court held:

> By providing 12 years of free public school education, and by assuring teachers, books, transportation and operating funds, the Texas legislature has endeavored to "guarantee, for the welfare of the state as a whole, that all people shall have at least an adequate program of education. This is what is meant by 'a Minimum Foundation Program of Education.'" The State repeatedly asserted in its beliefs in this Court that it has fulfilled this desire and that it now assures 'every child in every school district an adequate education.' No proof was offered at trial persuasively discrediting or refuting the State's assertion.[95]

The Court further qualified this distinction by stating:

> It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. Thus the key to discovering whether education is "fundamental" is not to be found in comparisons of the relative societal significance of education . . . Rather, the answer lies in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution.[96]

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94. *Rodriguez*, 411 U.S. at 17.
95. *Id.* at 24.
96. *Id.* at 33-34.

The Court specifically noted its difficulty with the quantitative analysis when it stated, "Even if it were conceded that some identifiable quantum of education is . . . constitutionality protected . . . we have no indication that the present levels of educational expenditure in Texas provide an education that falls short."[97]

The Court strongly felt that, in order to embrace the concept of strict scrutiny, it would be forced to trust its judgment, rather than the judgment of the legislature in determining the amount of local and state taxation in the distribution formula. Hence, it wished to avoid an intrusion into what had always been understood, in the judgment of the Court, as a state and local function.

The Court expressed grave reluctance to enter into state and local issues of this nature. The Court viewed the distribution formula as having certain purposes, including involving local citizens in the educational process and allowing for a maximum of local participation in tailoring educational programs to local needs.

Most important to practicing attorneys and education finance researchers was the fact that the Court declared that education was not a right afforded explicitly or implicitly under the Constitution. Thus, the equal protection standards of the Fourteenth Amendment were not applicable to education finance cases at the federal level. Specifically, Justice Powell wrote that the complexity of public education presented "intractable economic, social, and even philosophical problems." Given the complexity of a statewide public school system, "there will be more than one constitutionally permissible method of solving them."[98] The Court stated:

> [T]o the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory. . . . The Texas plan is not the result of hurried, ill-conceived legislation. It certainly is not the product of purposeful discrimination against any group or class. On the contrary, it is rooted in decades of experience in Texas and elsewhere, and in major part is the product of reasonable studies by qualified people. . . .[99]

97. *Id.* at 36.
98. *Id.* at 42, quoting Dandridge v. Williams, 397 U.S. at 487.
99. *Id.* at 54

In the Court's closing comment it terminated any future attempts at pursuing these issues based on this methodology within the federal judicial system. The Court wrote:

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various states, and we do no violence to the values of federalism and separation of powers by our hand. We hardly need add that this Court's action today is not to be viewed as placing its judicial imprimatur on the status quo. The need is apparent for reform in tax systems which may well have relied too long and too heavily on the local property tax. And certainly innovative new thinking as to public education, its methods and its funding, is necessary to assure both a higher level of quality and greater uniformity of opportunity. These matters merit the continued attention of the scholars who already have contributed much by their challenges. But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.[100]

As background, it should be noted that the rational basis standard has generally been utilized for most economic activities. In 1970, specifically regarding economic activities, the United States Supreme Court stated:

> In the area of economics and social welfare, a State does not violate the equal protection clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[101]

100. *Id.* at 58-59.
101. *Dandridge*, 397 U.S. at 485 (1970).

Thus, *Rodriguez* effectively ended finance reformers' strategy of arguing that education is a fundamental right before federal courts.[102] Hence, due to *Rodriguez* future education finance complaints were lodged primarily with state courts. This federal threshold barring fundamentality suits is predicated on the Supreme Court's desire to avoid rehearing this issue. Consequently, the likelihood of significant change regarding fundamentality is, at present, extremely limited.

Notwithstanding this discussion, the federal courts may be ripe for successful pursuit of this issue if allegations can be framed in light of *Plyler v. Doe*.[103] In *Plyler* the United States Supreme Court established education as a quasi-fundamental right in that it should be judged by an intermediate standard. Although education was not guaranteed under the Constitution,

> . . . neither is it merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction.[104]

The strict scrutiny standard is utilized if a suspect classification or a fundamental right is involved in a question before the courts. Additionally, an intermediate scrutiny standard exists when federal courts examine a quasi-suspect classification. In these issues, the government must prove that the classification reflects a substantive relationship to an important governmental interest.[105] At least in the federal courts, "any plea for a fundamental right to an education in the absence of a final determination that education is of itself a fundamental right must be constructed by drawing an indivisible link between education and other rights based in individual and collective liberties."[106]

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102. *See* School Bd. of Parish of Livingston, La. v. Louisiana State Bd. of Elementary and Secondary Educ., 830 F.2d 563 (5th Cir. 1987); *See also* Papasan v. Allain, 478 U.S. 265, 106 S. Ct 2932 (1986). *Papasan* clearly allows a continued federal challenge under an equal protection concept, specifically noting that an equal protection claim based on an unequal distribution cannot be barred by the Eleventh Amendment. *See also, School Finance and the Courts: A Reanalysis of Progress*, 59 EDUC. L. REP. (West) 949-950 (1990).
103. Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382 (1982).
104. *Id.* at 221.
105. *See* Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a New Equal Protection*, 85 HARV. L. REV. 1, 20-87 (1972). The intermediate standard has been utilized regarding issues such as: illegitimacy, Weber v. Aetna, 406 U.S. 164; aliens, Hampton v. Wong, 426 U.S. 88; and mental retardation, Cleburne v. Cleburne, 473 U.S. 432.
106. Thompson, *School Finance and the Courts* at 952.

Even with this venue, the best potential for immediate and successful challenge by plaintiffs is within the state courts through cases based entirely on state constitutional controlling language. In fact, state constitutional language may enable plaintiffs to secure success far beyond the potential envisioned through the federal judiciary system.

CHAPTER 8

CONTEMPORARY EDUCATION FINANCE LITIGATION

Post *Rodriguez*

Since the determination in *Rodriguez*, litigation has focused at the state level. Suit was brought in Michigan[107] over the constitutionality of the state public education distribution formula. In the original suit, the state supreme court held that the finance system denied equal protection under the state constitution. The Michigan distribution formula was heavily based on the wealth of local school districts as measured by the state equalized valuation of taxable property within each school district. Plaintiffs presented data which reflected significant disparities involving a number of indicators, including total expenditures per pupil, direct instructional expenditures, and high correlations with local wealth. Other data included high standardized test scores in districts which also paid classroom teachers higher salaries. The trial court found that local school district wealth was a suspect classification. Utilizing this framework, the trial court held for plaintiffs in challenging the state school aid distribution formula. During the trial court proceeding, the state legislature significantly revised the school aid distribution formula. The trial court noted that it would be willing to examine the new formula when appropriate. On rehearing,[108] the court noted that *Rodriguez*, decided in the interim, had defined the issue of equal educational opportunity and thus questions regarding this issue were not valid before the court. While *Milliken* was proceeding, the new formula was being litigated in *Board v. Porter*,[109] and the court examined the remaining issues. The court was presented with rather exhaustive data regarding state financing of public education. The court concluded that the system of financing public education within the state had a "legislative purpose of gradually equalizing state aid while at the same time not reducing the aid to any district."[110] Thus, the distribution formula in Michigan remained intact until the next suit.[111]

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107. Milliken v. Green, 203 N.W.2d 457 (Mich. 1972) [hereinafter *Milliken I*].
108. *Milliken*, 212 N.W.2d 711 (Mich. 1973) [hereinafter *Milliken II*].
109. Board of Educ. of Oakland Sch. v. Porter, 239 N.W.2d 645 (Mich. Ct. App. 1976).
110. *Board of Educ. of Oakland Sch.*, 239 N.W.2d at 649.
111. Sutton v. Cadillac Area Pub. Sch., 323 N.W.2d 582 (Mich. Ct. App. 1982).

In New Jersey, the state supreme court in *Robinson v. Cahill* ruled that the state education finance distribution scheme failed to meet the state constitutional burden.[112] The plaintiffs' arguments were based on New Jersey's equality standard of the "thorough and efficient" clause of the state constitution.[113] When the state supreme court found that the manner of distribution was unconstitutional, this was the first contemporary instance where a state court did so based solely on state constitutional grounds. The court was persuaded that equal educational opportunity depended in substantial measure on the moneys invested in a child's education.[114]

In both the *Serrano* and *Robinson* cases, while based on significantly different arguments, the courts were persuaded that the quality and quantity of educational opportunity were highly correlated with the moneys available for education. Hence, *Serrano* and *Robinson* firmly established the concepts of student equality and wealth neutrality as legitimate bases for challenging state distribution schemes.

In 1973, the Arizona state distribution formula was challenged. An Arizona superior court granted judgment for taxpayers, but not students, who claimed that the system was unconstitutional on state and federal violations of equal protection. On appeal, the state supreme court, in *Shofstall v. Hollins*,[115] reversed the decision and held that the state constitution only provided for a basic right to an education. The state thus required only that the distribution formula be rational, reasonable, and neither capricious nor discriminatory. Education was judged to be a fundamental right and the fact that taxpayers had differentiated tax burdens varying with the numerous levels of governmental service was not a violation of equal protection under the state or federal constitutions.

A challenge to the Illinois education finance distribution formula occurred in 1973, in *Blase v. State*.[116] The state supreme court upheld the circuit court and held the constitutional provision that the state had the major responsibility for financing public education did not require a literal interpretation of at least 50% of funds be provided by the state for the operation of the public schools.

112. Robinson v. Cahill, 287 A.2d 187 (N.J. Super. Ct. Law Div. 1972), *aff'd*, 303 A.2d 273 (N.J. 1973).
113. N.J. CONST. art. 8, § 41.
114. *Robinson*, 287 A.2d at 481.
115. Shofstall v. Hollins, 515 P.2d 590 (Ariz. 1973).
116. Blase v. State, 302 N.E.2d 46 (Ill. 1973).

In 1974, the Supreme Court of Washington, in *Northshore School District v. Kinnear*,[117] upheld the state education finance distribution formula. The plaintiffs had sought to declare the system unconstitutional. The court declared that a uniformity of size and property values was not necessary to satisfy the requirements of the Fourteenth Amendment.

In 1978, the Supreme Court of Washington, in *Seattle v. State*,[118] partially reversed its findings in *Northshore*. In *Seattle*, the court held that there could be compliance with the state constitution only if there were sufficient moneys derived through dependable and regular tax sources. Heavy reliance on special excess levies to provide for basic educational programs was unconstitutional. The court held that the special excess levies utilized by many school districts for basic programs should be used only for enrichment programs and that it was the duty of the legislature to make ample provision for all the children of the state.

Several states during the late 1970s reached similar conclusions in upholding the state education finance distribution formula.[119] While the factual situations were highly specific, the courts essentially ruled that if property wealth revealed widely varying levels of local prosperity which had a tendency to result in unequal expenditures, the overall system was still within constitutional boundaries in that minimal levels of education were offered to all. Specifically, the Idaho Supreme Court issued a lengthy opinion examining complex data as well as arguments involving equal educational opportunity and the disparities found among Idaho public school districts. The court's standard was one of a rational basis of the Equal Protection Clause when it overturned the trial court's decision in upholding the distribution formula. The majority opinion stated:

> Because of . . .[the] ongoing argument as to the relationship of funds expended per pupil . . . to the quality of educational opportunity, we refuse to venture into the realm of social policy under the guise of equal protection of the laws or fundamental right to education. The courts are ill-suited to a task which is the province of the legislature.[120]

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117. Northshore Sch. Dist. v. Kinnear, 530 P.2d 178 (Wash. 1974).
118. Seattle Sch. Dist. No. 1 of King County v. State, 585 P.2d 71 (Wash. 1978).
119. *See* Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); Olsen v. State, 554 P.2d 139 (Or. 1976); Scarnato v. Parker, 415 F. Supp. 272 (M.D. La. 1976).
120. *Thompson*, 537 P.2d at 642.

Buse v. Smith[121] in Wisconsin is unique in education finance litigation in that it is the only settled case that specifically challenged the state's recapture clause. The state supreme court held that this clause violated the state constitutional requirement for uniform taxation. While the court ruled that education was a fundamental right, this did not require equalization of revenue-raising ability of school districts.

In *Olsen v. State*[122] a relatively complex set of circumstances faced the state in defending its distribution formula. The Oregon system consisted of elementary, secondary, and unified school districts. Further, the funding patterns were complicated by intermediate education districts. Additionally, many school districts had timber lands that constituted "Oregon and California Lands," which generated separate funds. Data regarding the assessed valuations of timber reflected wide variations, as well as the complicating factor of a timber severance tax at the time of harvest. Data reflected disparities ranging from assessed valuations from $203,000 to $19,000 per pupil at the time of the suit. The Oregon State Supreme Court specifically noted that *Rodriguez* was not controlling in this instance. The plaintiffs had contended that education was a fundamental right and thus the classification system of school districts based on assessed valuations should be subject to strict scrutiny, as it harmed the fundamental right to education. The state supreme court rejected this contention, stating that "this approach of categorizing an interest as a fundamental or nonfundamental interest and deciding this issue upon the basis of whether the interest is explicitly or implicitly guaranteed by the Constitution is not a helpful method of analysis."[123] The court noted that its role should be one of weighing "the detriment to the education of the children of certain districts against the ostensible justification for the scheme of school financing."[124] The court also noted that simply because the plaintiffs had presented alternative systems of financing public education in the state, this was not sufficient to have the court rule that the present system was not valid. The court concluded that the wealth disparities did not violate the equal protection guarantees

121. Buse v. Smith, 247 N.W.2d 141 (Wis. 1976). Recently Michigan addressed this issue ruling against the state's recapture distribution formula Schmidt v. State, Ct. App. No. 132677, Michigan Sup. Ct., No. 90858, Sept. 29, 1992; Durant v. Department of Educ. (on second remand) 186 Mich. App. 83, 463 N.W. 2d 461 (1990) pending decision in *Schmidt*. In a more recent development the Michigan Legislature enacted a law banning property tax use to fund schools. See XII EDUC. WEEK 1 (August 4, 1993).
122. *Olsen*, 554 P.2d 139 (Or. 1976).
123. *Id* at 144.
124. *Id* at 145.

and did not violate the uniform mandate of the state constitution and, thus, upheld the system of distribution utilized by the state.

In 1991, the Supreme Court of Oregon again upheld the distribution formula. In *Coalition for Equitable School Funding v. State*[125] the plaintiffs argued that certain school districts did not have adequate funds to meet state-imposed standards. The court noted that the "Safety Net" amendment previously passed by the legislature allowed school districts to specifically levy property taxes for general operating purposes without voter approval. Hence, there was no requirement for the state legislature to specifically appropriate funds for the affected school districts.

In 1977, the Connecticut courts were asked to address the federal and state equal protection clauses as well as the state education clause in *Horton v. Meskill*.[126] The Connecticut Superior Court was persuaded by the earlier logic of *Robinson*. The court ruled that the state distribution formula was in violation of the state Equal Protection Clause. The court reasoned that public education was so basic and fundamental that any alleged infringement must be scrutinized in a strict manner. The Connecticut Supreme Court, in 1979, affirmed the lower court in *Horton II*.[127] During the next several years the Connecticut state legislature enacted various amendments to the funding formula for state aid. The issue returned to court, primarily based on these changes. In *Horton III*,[128] the state supreme court upheld the original court decision and struck down the various amendments passed since that time. Again, it was established that state constitutional language could be applicable and lead to a higher standard than that of the United States Constitution.

Beginning in 1978, New York experienced a lengthy challenge to its education finance distribution formula. In *Levittown v. Nyquist*,[129] a county supreme court held that the formula violated the equal protection clauses of the state and federal constitutions. Plaintiffs, originally from two different suits, alleged that the New York formula violated the Equal Protection Clause and education article of the state constitution and the Equal Protection Clause of the Fourteenth Amendment. As a result of *Rodriguez*, the Fourteenth Amendment complaint was withdrawn. Data were presented regarding the vast disparities of wealth among the school districts within the state. Data also revealed that poorer school districts levied significantly higher millage rates, yet could

125. 811 P.2d 116 (Or. 1991).
126. Horton v. Meskill, 332 A.2d 113 (Conn. Super. Ct. 1974).
127. *Horton*, 376 A. 2d 359 (Conn. 1977) [hereinafter *Horton II*].
128. Horton, 486 A. 2d 1099 (Conn. 1985) [hereinafter *Horton III*].
129. Board of Educ. of Levittown v. Nyquist, 408 N.Y.S.2d 606 (N.Y. Sup. Ct. 1978).

not offer the same educational services. The New York distribution formula called for school districts to levy 15 mills in order to raise $1,200 per pupil. If the district could not reach this figure with a 15-mill levy, then the state would make up the difference via state aid. Further, if a school district were to have an assessed valuation of more than $80,000, the district would receive no state aid ($80,000/15 mills = $1,200). Regardless of the distribution formula, the state also allowed for a flat grant allocation which gave every school district state aid regardless of need. Full valuation districts above $101,000 would receive a minimum of $360 per pupil in state aid. Additional data reflected the various forms of save harmless provisions which effectively prevented a degree of equalization. Data revealed that the ratio from the wealthiest to the poorest school district was 46 to 1. The plaintiffs' analysis showed a direct correlation between local wealth and expenditures for public education. The state argued that its formula was a rational policy established by the legislature. The Supreme Court of Nassau County found for the plaintiffs. An appellate division of the court affirmed, but modified, the initial ruling.[130] The court's rationale differed from that of the trial court. On further appeal, the Court of Appeals of New York ruled that the New York distribution formula did not violate the state equal protection clauses.[131] The appellate court noted that the system of financing public education did not violate the state constitution since average per-pupil expenditures exceeded all states except two. The court accepted these data-based arguments, but strongly noted that the plaintiffs had not argued that their schools had not met the minimal standard required by the Board of Regents. The court noted that the metropolitan overburden arguments were, in fact, a product of a variety of social ills and therefore could not be a function of the legislature's actions or inactions. The court examined the plaintiffs' arguments regarding the education article of the state constitution and opined that the language of the constitution made no mention of the fact that public education had to be substantially equivalent in every school district. The legislature had made a public school system available, and thus the court reversed the lower courts and upheld the constitutionality of the distribution formula.

In 1979, in *Board of Education v. Walter*,[132] the state supreme court on appeal and cross appeal found that the education finance distribution system did not violate the thorough and efficient provisions of the state

130. *Board of Educ. of Levittown*, 443 N.Y.S.2d 843 (N.Y. App. Div. 1981).
131. *Board of Educ. of Levittown*, 57 N.Y.2d 27, 439 N.E.2d 359 (1982), *appeal dismissed* 459 U.S. 1138, 103 S. Ct. 775. (1983).
132. Board of Educ. of Cincinnati v. Walter, 390 N.E.2d 813 (Ohio 1979).

constitution. The Ohio distribution formula required that all school districts levy at least 20 mills, and the formula rewarded school districts up to 30 mills as a reward-for-effort factor. The basic support program was a power equalizing model. The formula guaranteed a total yield of $48 per pupil per mill for the first 20 mills. The reward-for-effort model was set at $42 per pupil per mill. The state deducted the district's local yield per pupil per mill from the guaranteed $42 by multiplying the difference by the average daily membership and the equalized millage in excess of 20, but not exceeding 30 mills. The court noted that the legislature had developed a rational plan by which local control of schools served a valid public purpose. Further, the fact that it might be possible to develop a better and more efficient and thorough system was immaterial to the question before the court.

In Pennsylvania, the plaintiffs' claim in *Danson v. Casey*[133] was dismissed by the Commonwealth Court. The state supreme court upheld the lower court, noting that the plaintiffs had not presented sufficient allegations to justify overturning the distribution formula based on the constitutional language involving a thorough and efficient system of education. Further, the fact that the Philadelphia school district did not have the power to directly levy taxes did not violate the state constitution.

In Wyoming, the state supreme court reversed a lower court decision in declaring the state system of financial distribution to be unconstitutional. This decision, *Washakie v. Herschler*,[134] was conceptually similar to the original *Rodriguez* decision. The distribution formula was based on a system of teacher units. Each teacher unit received $21,300 for districts classified as small. Every twenty-five students constituted a teacher unit. State funds were then distributed based on local wealth. Assessed valuations reflected wealth ratios from the wealthier school districts to the least wealthy school districts at a ratio of 21 to 1. The court utilized a strict scrutiny standard in view of the constitutional language that stated, "the legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every kind and grade. . . ."[135] The court ruled that the distribution system failed to afford equal protection under the state constitution. Plaintiffs were able to demonstrate that property-poor school districts reflected a consistent pattern of lower revenues and thus lower expenditures than property-rich school districts. The court judged

133. 399 A.2d 360 (Pa. 1979).
134. Washakie County Sch. Dist. No. One v. Herschler, 606 P.2d 310, *cert. denied sub nom.* Hot Springs County Sch. Dist. v. Washakie, 449 U.S. 824, 101 S. Ct. 86 (1980).
135. WYO. CONST. art. VII, § 1.

education to be a fundamental interest. Therefore, the state aid mechanism needed to reflect the wealth of the state as a whole. Additionally, the court concluded that capital outlay revenues had to be equitably distributed. The court also ruled that the issue was timely, although the defendant had argued that the controversy was not ripe for the court to adjudicate. As a result of the suit, the present distribution formula is in adjudication. One of the issues currently before the court is the issue that the Wyoming distribution formula allows for a recapture provision from the wealthier school districts.[136]

In 1981, the Georgia Supreme Court ruled on a declaratory judgment in upholding the state's education finance system in *McDaniel v. Thomas*.[137] The Georgia distribution formula was based on an "Adequate Program for Education in Georgia" (APEG). This reflected cost calculations for thirteen items for each school district. Data revealed that the greatest predictor of APEG was classroom teacher salaries. APEG was then weighed against the required local effort (RLE) being subtracted from the APEG index in order to determine the state share. RLE was a proportional share of the equalized adjusted assessed valuation multiplied by a total statewide local effort index. The court ruled that the formula was rational in relationship to the purpose of the state for providing basic education funding. Thus, it was not in violation of the state's Equal Protection Clause. The court noted that local school districts could go beyond the basic program and the state was not under an obligation to equalize educational opportunities among all the school districts of the state.

In *Lujan v. State*,[138] the State Supreme Court reversed the trial court in holding the state's system constitutional. The state was able to successfully argue that local control of public education was a valid public policy supported by legitimate state interests. The Colorado formula was primarily based on an authorized revenue base (ARB), with a specific maximum allowable amount that a school district could expend for general operating expenses. The ARB was generally adjusted upward based on the previous year's expenses. Regardless of the school district's wealth, all school districts received an equalized payment of $35 per mill per pupil. Operationally, the formula guaranteed each school district either the state share or the minimum guarantee, whichever was greater. The court noted that the constitutional mandate for a thorough and uniform system of free public education was not a mandate for absolute

136. Campbell County Sch. Dist. v. Sullivan (Wyo. 1993).
137. 285 S.E.2d 156 (Ga. 1981).
138. 649 P.2d 1005 (Colo. 1982).

equality in educational services or expenditures. Specifically addressing capital outlay, the court held that mill levy restrictions, as well as other assessment levies, were rationally related to legitimate state purposes.

In 1983, *Hornbeck v. Somerset*[139] challenged the Maryland distribution program based on the disparities in taxable wealth among the school districts of the state. The distribution formula applied to the basic current expenses for school districts equaled $690 multiplied by the enrollment of the school district. The figure was contingent upon a school district levy equal to the product of the wealth of the county and a uniform percentage determined by the state every fiscal year for each school district. Thus, each district had a different levy. Those districts that had less wealth received greater state moneys. The foundation amount, which was the minimum amount required by law, was supported by the state in the amount of 55 percent. Those moneys expended above the foundation amount were supported with 50% state aid. State enrollment was multiplied by $624 and then the product was multiplied by .45, resulting in basic aid for all school districts. Next, the total enrollment of the state was multiplied by $66 and then multiplied by .50 and divided by the total wealth of all school districts. This resulted in a uniform tax rate applicable to all counties in order to raise the local share. As a result, the plaintiffs argued, wealthier school districts could raise greater moneys from the uniform rate than less wealthy counties. Each district could levy above the minimum with no penalty inflicted by the state. Additionally, the state supported density aid in the amount of $100 per student for certain school districts above specified density levels. In reality, only the City of Baltimore qualified for this aid. The state provided virtually full funding for various categories. The lengthy complaint argued that the distribution formula required poorer school districts to raise higher taxes in order to support approximately two-thirds of the total expenditures. Further, poor children required greater educational services unaccounted for in the formula. Plaintiffs argued that nearly 70% of the poorest children of the state resided in fiscally distressed school districts that exhibited every facet of municipal overburden and financial inadequacy. The court of appeals vacated a decree of unconstitutionality and held that the system of distributing state aid to the school districts was constitutional. The court held that equalized expenditures were not required under the state constitution as long as no child was disadvantaged or harmed. The court stated that poor school districts were not a suspect class and, therefore, the students could not have a fundamental right to an education. The distribution formula could only be declared invalid

139. Hornbeck v. Somerset County Bd. of Educ., 458 A.2d 758 (Md. 1983).

"if the means chosen by the legislature [were] irrelevant to the achievement of the State's objective."[140] After an exhaustive analysis of the historical context of this controlling language in the constitution, the court noted that, based on the historical evidence, the words thorough and efficient were not the equivalent of uniform.[141] The constitutional mandate did not require exact equality of funding and expenditures. It required a thorough and efficient system of free public education and the maintenance of public education via a public taxing system. Thus, the court ruled that the Maryland system was not in violation of the equal protection clauses of the state constitution. The court noted in its opinion a philosophical perspective on this type of suit. The court stated:

> The central role of education in our society is, of course, universally accepted . . . . [T]he issue in cases challenging the constitutionality of state public school finance system is not whether education is of primary rank in the hierarchy of societal values, for all recognize and support the principle that it is. Nor is the issue whether there are great disparities in educational opportunities among the State's school districts, for the existence of this state of affairs is widely recognized. Neither is the issue in this case whether it is desirable . . . that the same mathematically precise amount of money should be spent on each child's public school education, without regard to the wealth of the subdivision in which the student reside. The issue is whether anything in the constitution, state or federal, requires such a result or prohibits in any county, regardless of wealth, from spending any more . . . . Otherwise stated, it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation. The quantity and quality of educational opportunities to be made available to the State's public school children are a determination committed to the legislature or the people of Maryland through adoption of an appropriate amendment to the State Constitution.[142]

In *Dupree v. Alma*,[143] the Arkansas court ruled that education was not a fundamental right under the Arkansas Constitution. Thus, the state's

140. *Id.* at 782.
141. *Id.* at 776.
142. *Id.* at 790.
143. Dupree v. Alma Sch. Dist. No. 30, 651 S.W. 2d 90 (Ark. 1983).

Equal Protection Clause did not subject the state's distribution formula to an examination based on strict scrutiny. However, the court refused to accept that students were not harmed by the reliance on minimum funds and a heavy reliance on local taxes. Thus, the state distribution plan was found to violate the state's Equal Protection Clause on a rational relationship examination. Further, the court ruled that the constitutional requirement to provide a suitable and efficient system of schools had not been met. The court was persuaded by the plaintiffs' analysis of the distribution formula. The plaintiffs showed that through various hold harmless provisions, the system was inequitable. Further, the plaintiffs' methodology demonstrated vast disparities concerning expenditures as well as educational opportunities. Specifically, the plaintiffs were able to demonstrate that only 7% of the students resided in school districts with greater than $1,500 per-pupil total revenues as contrasted with 21% of the state students residing in school districts with less than $1,100 per-pupil revenues. In fact, the plaintiffs' methodology revealed that the state aid formula increased the disparity of funds available to local school districts.

In 1980, the West Virginia case of *Pauley v. Kelly*[144] charged that the state aid formula violated the "thorough and efficient" clause of the state constitution, as well as the state equal protection clause. The case, dismissed by the circuit court, was appealed to the state supreme court. The state supreme court found that the state aid distribution formula violated the thorough and efficient clause, as well as the Equal Protection Clause of the state constitution. The court order was specific and lengthy, allowing what would constitute equal educational programs. The case was remanded to the circuit court to oversee the formulation of a master plan addressing the issues of thoroughness and efficiency and requiring equalization of personnel, facilities, curriculum, materials, and equipment. This plan was to ensure programmatic equity throughout the state school districts.

In 1984, *Pauley v. Bailey*[145] came before the courts in order to force the state to comply with the previous court decision. The court ordered compliance, but no timetable was specified.

The distribution of state revenue was again litigated in the courts of Michigan in 1984, when the plaintiffs in *East Jackson Public Schools v. State*[146] argued that the distribution formula was unconstitutional because it produced unequal per-student funding among the school districts. The plaintiffs consisted of twenty school districts with a student

144. Pauley v. Kelly, 255 S.E.2d 859 (W. Va. 1979).
145. Pauley v. Bailey, 324 S.E.2d 128 (W. Va. 1984).
146. 348 N.W.2d 303 (Mich. 1984).

from each district. This suit was different from the original *Milliken* suit in that the state distribution formula had been changed. Nonetheless, local school districts relied on local property taxes for most of the total expenditures necessary to run the public schools. The plaintiffs pointed out that a heavy reliance on local wealth existed within the formula and that several school districts were "out of formula" in that these districts received no state aid and relied entirely on local property wealth. Likewise, other school districts totally relying on state aid could not offer the same expenditures as those districts that functioned "out of formula." Data analysis revealed that the present system was less disparate than the previous system litigated under *Milliken*. The plaintiffs claimed that unequal funding per pupil existed within the school districts of the state. Testimony also revealed that no student had been denied a basic educational opportunity. Further, data revealed that no school district within the state failed to offer an adequate education as measured by a variety of standards. The Court of Appeals, utilizing the original logic of *Milliken*, held the distribution formula was constitutional and that public education was not a fundamental right under the state constitution and that the statutory financing scheme did not deny equal protection to students. The court further reasoned that the state's obligation to provide a system of public education was not synonymous with an obligation to provide equal per-pupil funding among districts. An important additional notation was the court's opinion that while students had standing, the school districts did not have standing to raise the constitutional issues involved in the challenge. The court was of the view that the plaintiff school districts could not seek these rights. The school districts were attempting to compel the courts to overturn the system in order to enact a completely different and new system of distribution. Specifically, the court held:

> School districts and other municipal corporations are creatures of the state. Except as provided by the state, they have no existence, no functions, no rights and no powers. They are given no power, nor can any be implied, to defy their creator over the terms of their existence. They surely have no power to bring suits of such nature on behalf of residents within their boundaries, or to expend public funds to finance such litigation of, or on behalf of, private citizens.[147]

147. *East Jackson Pub. Sch.*, 348 N.W.2d at 306.

While standing is generally not a useful defense as discussed herein, there are instances in which this defense has proven to be persuasive.[148] At this point, suffice it to say that this is generally one of the standard defenses that a state utilizes early in the proceedings.[149]

Later Reform Cases

In 1987, plaintiffs contended in *Britt v. North Carolina*[150] that the distribution formula violated the general and uniform clause and the equal opportunities provision of the state constitution. The appellate court opined that the framers of the state constitution intended for students to have equal access to the public schools regardless of race and to have a fundamental right to elementary and secondary education. The court further stated that this did not mean that each student within the North Carolina system was guaranteed a fundamental right to public education equivalent to that received by every other student in the state.

The South Carolina distribution formula was challenged in *Richland County v. Campbell* in 1988.[151] Plaintiffs had argued that the vast disparities created by the formula violated the state constitution. The state supreme court noted that the distribution formula considered the individual wealth of each school district and that the state constitution did not require the legislature to "pay" for the cost of providing the total educational program.

In *Kirby v. Edgewood*,[152] the Supreme Court of Texas overturned the appellate court by ruling that education was a fundamental right. Evidence reflected that the state of Texas utilized a foundation formula that was insufficiently funded to ensure minimal educational opportunities throughout the state. The Texas Constitution required uniform delivery of educational opportunity, and education was regarded as a fundamental right. Evidence revealed that more than one-third of all school districts had insufficient moneys to offer adequate programs. Currently, the state legislature is attempting to design an education finance formula that is acceptable to the court within court-imposed timelines.

The uniformity of a minimal standard was accepted by the state supreme court of Wisconsin in *Kukor v. Grover*[153] The court recognized

148. *See, e.g.*, Christensen v. Graham, Dist. Court of App., Case No. 88-69, (Fla.).
149. For a complete discussion of standing *see* Board of Educ. v. Walter, 58 Ohio St. 2d 368, at 826.
150. Britt v. North Carolina State Bd. of Educ., 357 S.E.2d 432 (N.C. Ct. App. 1987).
151. Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988).
152. Kirby v. Edgewood Indep. Sch. Dist., 761 S.W. 2d 859 (Tex. 1988).
153. Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989).

that education, to a certain degree, was a fundamental right, but chose to apply a rational-basis standard in that the plaintiffs had failed to prove or allege a complete denial of educational opportunity within the state.

In Kentucky, the state supreme court in *Rose v. Council*[154] ruled on behalf of the plaintiffs. The plaintiffs were successful in their arguments that the system of common schools was not efficient. The court ruled that education in Kentucky was a fundamental right. As such, this fundamental right could not be met when the state education system was significantly underfunded and inadequate. Further, pervasive inequalities throughout the 177 districts revealed that the educational offerings differed significantly throughout the state. The decision called for the complete overhaul of the entire public elementary and secondary system in the Commonwealth of Kentucky.

In 1990, the New Jersey Supreme Court in *Abbott v. Burke*[155] ruled that the entire public education finance system was unconstitutional. *Abbott* was sixteen years after *Robinson v. Cahill*.[156] *Abbott* declared that the system was unconstitutional, as the distribution formula did not meet the needs of poor urban districts of the state. Further, the court ruled that the distribution formula was not fiscally neutral. Additionally, the thorough and efficient clause of the state constitution was not met. The plaintiffs had carefully constructed their complaint so only the poorest of school districts should be compared to the wealth and expenditure levels, and thus, the total curriculum of the wealthiest school districts. Hence, plaintiffs were able to narrowly confine the issue before the court. Technically, the plaintiffs did not ask for the court to overturn the entire system; they merely asked that the poorest school districts be made equal to the wealthiest school districts. Operationally, in order to achieve this goal, the entire distribution system would have to be redesigned. This strategy also made the quantitative and qualitative comparisons much easier to demonstrate before the court. In fact, *Abbott* also demonstrated where the plaintiffs were able to argue that the formula, as it applied to the plaintiff school districts, actually harmed children in relationship to students in other school districts. Plaintiffs demonstrated the quantitative and qualitative differences of availability between children in the wealthiest and poorest school districts of the state. Specifically regarding the *Abbott* methodology, relative disparity has had limited success; in contrast, absolute disparity offers plaintiffs a

154. Rose v. Council for Better Educ., 790 S.W. 2d 186 (Ky. 1989).
155. Abbott v. Burke, 575 A.2d 359 (N.J. 1990).
156. Robinson v. Cahill, 287 A.2d 187 (N.J. Super. Ct. Law. Div. 1972), *aff'd*, 303 A.2d 273 (N.J. 1973).

more significant chance for success. Generally, plaintiffs hope to demonstrate that relative disparity is in fact so great that it is actually absolute disparity, given the hopelessness of the situation, particularly as it applies to the inner cities. Thus, the *Abbott* methodology proved in this instance to be highly successful. The *Abbott* strategy has potential for plaintiffs in other states. Further, in *Abbott* the supreme court noted that viable and substantive educational criteria exist to measure the educational content in every school district. The court stated:

> The proof of substantive educational content has several sources. The Act itself, the rules and regulations of the board and the Commissioner, the Commissioner's implementing actions, and the evidence of the education that actually takes place in the district—through curriculum plans, course offerings, studies, reports, valuations, and observations. The proofs differentiate this case from *Robinson I*.[157]

In its unanimous opinion, the court added:

> From this record we find that certain poorer urban districts do not provide a thorough and efficient education to their students. . . . We find the constitutional failure clear, severe, extensive and of long duration.[158]

Abbott v. Burke clearly indicated that the emphasis of the court on the provision of equal programs to students throughout the state was the primary concern in assessing the equity of the state education finance plan. The legislature passed the Quality Education Act of 1990, raising an additional $1.1 billion in income and sales taxes. This tax increase was not politically acceptable by the populace and was soon replaced by less-significant tax increases.

The state of Montana has a long history of litigation involving the education funding distribution formula, dating from the early 1970s.[159] Most recently, in *Helena Elem. Sch. Dist. v. State*[160] the Montana Supreme Court ruled the distribution formula was unconstitutional in that wide disparities led to unequal educational opportunity. At the time of this writing, two suits were ongoing involving the operationaliza-

157. *Abbott*, at 389-390.
158. *Abbott*, at 408.
159. *See* Woodahl v. Straub, 520 P.2d 776 (Mont. 1974).
160. Helena Elem. Sch. Dist. v. State, 769 P.2d 684 (Mont. 1989).

tion of the supreme court suit as well as the distribution formula to small and rural districts within the state.[161]

The most recent case from Oregon, *Coalition for Equitable School Funding v. State*,[162] argued that the lack of uniformity conflicted with the state constitution. The plaintiffs argued that all state mandates had to be funded by state aid as well as equal funding on a per-pupil basis. The Oregon Supreme Court rejected the plaintiffs' contentions inasmuch as the constitution and statutes allowed local school districts to utilize local property levies to meet any state standards in determining appropriate per-pupil expenditures.

161. Montana Rural Educ. Ass'n v. State, BDV-91-2065 (Mont. 1st Jud. Dist., Lewis and Clark County); Helena Elem. Sch. Dist. v. State, BDV-91-1334 (Mont. 1st Jud. Dist., Lewis and Clark County).

162. Coalition for Equitable Sch. Funding v. State, 811 P.2d 116 (Or. 1991). *See also, The Implications of Coalition for Equitable School Funding v. State for the Future of Public School Finance Reform Litigation*, 69 EDUC. L. REP. 1009-1022 (1992).

CHAPTER 9
PRESENT STRATEGIES AND LAWSUITS

Analysis of Litigation Strategies

The federal courts present unique and often insurmountable challenges to plaintiff concerns. If plaintiffs were to show that a suspect classification were significantly harmed, then the chances of successful litigation in the federal courts could be increased. However, suspect classifications such as race, religion, and sex would be extremely difficult to statistically prove in an education finance suit because finance distribution formulas are largely enrollment-driven. Additionally, issues such as race, religion, and sex are not factors in traditional education finance formula variables. Nevertheless, if it were shown that poorer school districts were largely minority in composition compared with wealthier school districts, then the issue of suspect classification could be raised by plaintiffs. These suspect classifications are, however, generally distributed among all school districts. In addition, it must be noted that poverty is not a suspect classification.

On the federal level, if heightened scrutiny was utilized in limited situations, it could be argued that lack of a quality education is harmful to individuals in freedom of expression, for example, voting.[163] This argument would also be difficult to statistically demonstrate, given the number of variables involved in the issue. Additionally, it would take an active judiciary with a far-reaching perspective of the benefits of public schooling for the case to prove acceptable.

On the state level, plaintiffs' arguments find much more fertile ground. Generally, plaintiffs base their arguments on either the equal protection clause of the state constitution or the state education clause or both. Obviously, the diversity of language and the variations of emphasis found within state constitutions offer a wide array of approaches and possible judicial interpretations. State constitutions may offer substantive rights that are far more reaching than the Federal Constitution. As a result, state courts have developed interpretive tools different than those which have proven to be appropriate to the Federal Constitution.[164]

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163. *See* Julie Underwood and Deborah Verstegen, *School Finance Challenges in Federal Courts*, at 188.
164. *The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324, 1353 (1982).

In 1989, Thro developed a classification scheme of state constitutional language.[165] His Category I lists reflected clauses that impose a minimum educational obligation on the state legislature. These states have, for the most part, not provided fertile ground for plaintiffs.[166] Category II constitutions are those that exhibit greater state obligations and assert that public education must meet certain minimal standards such as thoroughness and efficiency.[167] Thro notes that plaintiffs have achieved some successes where states had these constitutional provisions. Category II exhibits a history that shows these states have proven ripe for challenge by plaintiffs.[168] Category III states are those that have stronger and more specific language in their constitutions.[169] Currently, several of these states are engaged in education finance litigation. Category IV states are those that have clauses providing fundamental right status for education.[170]

The thorough and efficient concept has been litigated in a number of cases in different states. Courts have differed significantly in their definition of this concept as well as how it should be applied to the public schools. For example, in *Robinson I* the court stated that if such a standard were to exist, then the end product must meet the state constitution's language. Thus, by definition, a system of instruction in any district within the state which is not thorough and efficient fails the constitutional test. Further, regardless of the reasons for failure, the state has the obligation to rectify the constitutional violation.

Contrary to the *Robinson* logic, the *Danson v. Casey*[171] decision from Pennsylvania previously discussed illustrates a totally different judicial viewpoint. In *Danson*, the court was of the opinion that as long as the legislative scheme for financing public education was reasonably related to providing for the maintenance and support of a thorough and efficient system of public education, the legislature had fulfilled its constitutional duty. Thus, such state constitutional guarantees regarding thor-

165. *See* William E. Thro, *To Render Them Safe: The Analysis of State Constitutional Provisions in Public School Finance Reform Litigation*, 75 VA. L. REV. 1639 (1989).
166. Category I includes Alabama, Arizona, Connecticut, Hawaii, Kansas, Louisiana, Nebraska, New Mexico, New York, North Carolina, Oklahoma, South Carolina, Utah, and Vermont.
167. Category II includes Arkansas, Colorado, Delaware, Florida, Idaho, Kentucky, Maryland, Minnesota, Montana, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.
168. *See, e.g.*, *Robinson*, 287 A.2d 187; *Rose*, 790 S.W.2d 186; *Helena*, 769 P.2d 684; *Edgewood*, 777 S.W.2d 391.
169. Category III includes California, Indiana, Iowa, Massachusetts, Nevada, Rhode Island, South Dakota, and Wyoming.
170. Category IV includes Georgia, Illinois, Maine, Michigan, Missouri, New Hampshire, and Washington.
171. 399 A.2d 360 (Pa. 1979).

ough and efficient mandates do not guarantee school children in a given district the same identical educational services that might be available to school children elsewhere in the same state.

Consequently, the actual usage of such terms will vary greatly from court to court and from state to state. These two cases illustrate the vast divergence in judicial thinking regarding this standard. The various actual understandings of thorough and efficient clauses will be a product of the state constitution's controlling language, the quality of the plaintiffs' as well as the state's statistical methodology, and the quality of the legal arguments on both sides. Thus, predicting the outcome of thorough and efficient complaints is a difficult undertaking.

Thro has, without question, advanced the understanding of education finance litigation with his taxonomy scheme. Thro concludes that "[b]ecause the state education clauses have limited utility as vehicles for public finance reform, litigants have searched for alternative state constitutional provisions that would be more effective."[172] However, Thro's analysis, while quite helpful, does not necessarily shield the state from a well-grounded complaint or provide for its overall defense strategy. The state must counter-attack the claims of plaintiffs on the language of the state constitution, using its statistical analysis to show the court that the actions of the state are indeed rational and directly related to, and congruent with, the language of the state constitution. The state must respond to the specific charges of the plaintiffs as opposed to merely shielding itself with the language of the state constitution. Regardless of the language of the state constitution, plaintiffs will attempt to show, through a variety of statistical analyses and mechanisms, that state constitutional mandates are not being met.

Active Lawsuits

Obviously, litigation regarding the distribution formula is a high-risk activity for both plaintiffs and defendants. For defendants, the risks are substantial in that they could dictate court orders for dramatic changes in distribution formulas. In such an instance, the cost to the public treasury may be extremely high for many years to come. For plaintiffs, the risks are significant in that they may mean losing; thus, the result dictates that these school districts must educate children in an educational environment which the plaintiffs perceive as insufficiently funded. Both parties face the significant risk of unintended consequences; that is, the solution may not be what either party had in mind, but may be one that

172. William E. Thro, *To Render Them Safe* at 1669-1670.

is only acceptable to the courts. This often leads to greater state control over what was previously conceived as local decision-making. Nevertheless, the authors are secure in predicting that these suits will continue for many years into the future.

During the early 1990s, an intense new wave of suits emerged. As of 1992, plaintiffs had won at the state supreme court level in Arkansas, Connecticut, Kentucky, and Texas with no further filings at present. Plaintiffs in another six states had also won at the state supreme court level, but further compliance litigation had occurred where the courts had either retained jurisdiction or plaintiffs had refiled, resulting in a review of progress. Compliance litigation had either followed or was actively in place in 1992 in California, Montana, New Jersey, Washington, West Virginia, and Wyoming. In nine states, plaintiffs had lost at the supreme court level with no further filings, or alternatively, had lost resultant complaints as well. These states were Colorado, Georgia, Maine, Maryland, Michigan, North Carolina, Oregon, South Carolina, and Wisconsin. Additionally, in Arizona, Idaho, New York, Ohio, Oregon, Oklahoma, and Pennsylvania, plaintiffs had lost at the supreme court but had filed further complaints that at the time of this writing have not been heard.

The dynamics of contemporary education finance litigation make it virtually impossible to present an accurate account of all actions before every trial court.[173] Further, it is commonplace that many complaints do not reach trial for one of several reasons. Plaintiffs initiate lawsuits frequently and in many instances withdraw them just as quickly. Further, lawsuits may be dismissed by the court, as it is common for states to file motions for dismissal. Some suits are never reported and may not go beyond the lowest trial court as the plaintiffs may not appeal.

Despite these severe limitations, an incomplete overview is provided below. In the last months of 1992, litigation was before the court in thirty states including Alabama,[174] Alaska,[175] Arizona,[176] Cali-

173. The discussion of the current cases also appears in DAVID C. THOMPSON, R. CRAIG WOOD, AND DAVID C. HONEYMAN, *supra* note 30.

174. *See* Alabama Coalition for Equity v. Hunt, CV-90-883-1; and Harper v. Hunt, CV-91-000117, Montgomery County, Circuit Court, March 31, 1993.

175. Matanuska-Susitna Borough v. Alaska, Sup. Ct., 3DA-86-2022, 1989, appeal pending.

176. Roosevelt Elem. Sch. Dist. Number 66 v. C. Diane Bishop, Super. Ct., State of Arizona, Maricopa County, NO. CV91-13087.

fornia,[177] Florida,[178] Idaho,[179] Illinois,[180] Indiana,[181] Kansas,[182] Louisiana,[183] Maine,[184] Massachusetts,[185] Michigan,[186] Minnesota,[187] Missouri,[188]

177. *See* FLOYD SHIMOMURA AND DANIEL STONE, SCHOOL FINANCING LITIGATION IN CALIFORNIA, presentation before the National Association of Attorneys General, School Finance Litigation Workshop, Washington D.C., September 17-18, 1992, referencing State v. North Sacramento Sch. Dist. and ABC Unified Sch. Dist. v. State Orange County Sup. Ct.
178. One dormant case is Christensen v. Graham, Dist. Court of App., Case No. 88-69; Sarasota v. State questions the property tax limitations for school district levies, the state supreme court is expected to rule in the Spring of 1993; additionally at least two other complaints are expected to be filed.
179. Frazier v. State, Fourth Judicial Dist, Ada County, Idaho, Case No. 93882; Idaho Schs. for Equal Educ. Opportunity v. Evans, Second Judicial Dist., Latah County, Case No. C-3025.
180. The Committee for Educ. Rights v. Thompson, Cir. Ct., Cook County, Chancery Div., No. 90CH11097.
181. Lake Central v. State, This Indiana suit was dropped in late 1992; there is a possibility for refiling.
182. Four cases were consolidated in 1992: Mock v. State; Newton USD v. State; USD v. State; and Hancock v. State; Memorandum October 14, 1991. After intervening legislative action, these suits were dismissed by letter decision. The *Newton* plaintiffs, however, were permitted under amendment of the decision to join under a new suit filed in USD 229 v. State. In addition, other districts have filed new actions challenging the new 1992 state aid formula.
183. Charlet v. Legislature of State of Louisiana, 19th Jud. Dist. Court.
184. Maine Sch. Admin. Dist. No. 1 v. Ward, State of Maine, Kennebec, Super. Ct. CV-92.
185. McDuffy v. Robertson, SJC 90-128 (Mass. Jud. Ct. 1990), June 15, 1993.
186. *Hamtramack Sch. Dist. Bd. of Educ.*, Ct. App. No. 130580.
187. Skeen v. Minnesota, Wright County Dist. Court, Tenth Judicial Dist. No. C7-88-1954, *see also* Mark. B. Levinger, *Trial by Ordeal*, Presentation before the National Association of Attorneys General, School Finance Litigation Workshop, Washington D.C. (September 17-18, 1992).

Montana,[189] New Hampshire,[190] New York,[191] North Dakota,[192] Nebraska,[193] Ohio,[194] Pennsylvania,[195] Rhode Island,[196] South Dakota,[197] Tennessee,[198] Vermont,[199] Virginia,[200] Washington,[201] Wyoming,[202] and West Virginia.[203] In some instances, the court has issued its opinion but it has yet to appear in a reporter. According to the press, additional filings may occur in as many as one-half of the states. When these instances are added to compliance monitoring, the education finance climate will continue to grow more intense.

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188. The Committee v. State; *see also*, Lee's Summit v. Missouri, Case No. CV190-510CC and No. CV190-1371CC.
189. *Montana Rural Educ. Ass'n*, BDV-91-2065 (Mont. 1st Jud. Dist., Lewis and Clark County); *Helena Elem.*, BDV-91-1334 (Mont. 1st Jud. Dist., Lewis and Clark County).
190. Claremount v. Gregg, Super. Ct., Merrimack County (1992).
191. Reform Educ. Financing Inequities Today v. Cuomo, Sup. Ct. Nassau County, Index No. 2500/1001.
192. Bismark Pub. Sch. v. North Dakota, Burleigh Civil No. 41554.
193. Gould v. Orr, 91-0097, Cir. Ct. decision in favor of defendants; *see also*, Meyer v. Nebraska Dep't of Educ. 105-188 (Dist. Ct. Lincoln City).
194. Thompson v. State, Court of Common Pleas, Perry Co. Case No. 21752; Howard v. State of Ohio, Case No. 21752, Court of Common Pleas, Perry Co. *consolidated* DeRolph v. State of Ohio, Case No. 22043, Court of Common Pleas, Perry Co., Dec. 19, 1991.
195. Pennsylvania Ass'n of Rural and Small Schs. v. Casey, No. 11 M.D. (Commonwealth Court).
196. Central Falls v. Lippit; City of Pawtucket v. Sundlun, CA 91-8644; and Exeter-West v. Rhode Island, CA 91-8261, Providence County Sup. Ct.
197. Bezdichek v. State, Hughes County (S.D.), Sixth Jud. Cir., CIV 91-1073.
198. Tennessee Small Sch. Sys. v. McWherter, No. 01-A-01-9111-CH-00433 (Tenn. Ct. App.), the trial court ruled on behalf of plaintiffs, appellate court overturned the trial court on June, 2, 1992, the case is presently being appealed to the state supreme court.
199. *Coalition for Equity in Educational Funding*, in November, 1992 the trial court rejected the plaintiffs' arguments ruling on behalf of the state. An appeal by the plaintiffs may be filed; *see also* Board of Sch. Comm'r v. Wilson, 1121-92 cac, August 1992 Vermont Superior Ct.
200. Scott v. Commissioner, dismissed at trial court, appealed filed from the Circuit Court, City of Richmond, Chancery No. CH92C00577, to the Supreme Court of Virginia, April 1, 1993.
201. Yakima Sch. Dist. v. State, No. 91-2-02133-1; *see also*, Tronson v. State, Super. Ct., Thurston County (Wash.), No. 91-2-00555-6.
202. *Campbell County*, see note 136.
203. West Virginians for Comm. Sch. v. Marockie, CV 92-C-553, Cir. Ct. Kanawha County (1992).

CHAPTER 10
FUTURE EDUCATION FINANCE ISSUES

The Future of Education Finance Litigation

The financing of public education in the United States obviously competes for revenues with other necessary services. Often, state policy makers are highly critical of public education expenditures, particularly in view of state revenue constraints. Yet, many of these state policy makers routinely approve expenditures fifteen to twenty times greater in order to incarcerate a prisoner within the penal system. Such expenditures, while obviously necessary, produce no economic returns to society. Public policy makers, with rare exception, focus on the short term. That is to say, the activity and return on the expenditure must occur within the policy makers' term of office in order to have a perceived value. Given this reality, education finance litigation is difficult to adequately resolve within the realities of the current political and financial structure of public elementary and secondary education.

One must understand that considerations of fairness and justice may transcend equality of treatment. In fact, equity may require deviations from absolute mathematical equality so that fairness may be served with regard to children with special needs. This concept, as previously discussed, is difficult for policy makers, as well as others, to grasp.

As a percentage of the gross national product, American society spends less for public elementary and secondary education than most western countries. Critics and observers have noted United States children spend less time in school than all our economic competitors. Commentators on American life have long pointed out that children in our society experience inattentive or overworked parents, scarce child care and preschool opportunities, unsafe neighborhoods, mindless television programming, and overall isolation from adults. Half a million children under six years of age have no health insurance, and one-fourth of pregnant women have no prenatal care. Further indicators reveal that at least 35% of children who enter kindergarten are unprepared to learn because they lack skills in vocabulary and sentence structure that are crucial to success in school.

Previously, the authors observed that public education operated in a fairly efficient manner. This is not to suggest that efficiency equates with fundamental fairness. It could be argued that public education was fairly inexpensive and perhaps, given one's value system, even cost effective. Which is to say, that it reflected the efficiency of the marketplace. But

public education finance did not operate based on the supply and demand of the open marketplace because the state legislature substitutes as an interpreter of interests, both political and economic. In other words, society substituted the political arena as a proxy for the arena of the marketplace.

Unfortunately, this distinction fails to truly address the reality of scarce resource distribution. An examination of distribution reveals vast disparities of resources and resultant educational opportunities within many states. In fact, it could be argued that often legislatures only operated to instill their social and financial position via state aid formulas, a phenomenon sometimes referred to as "politics by printout." This reality is often compounded in that the typical state legislature is badly "balkanized" by competing self interests.

Thus, the current arena of competing interests have long since moved from the open economic marketplace to the political arena of the state legislature. In recent times these competing interests have moved into, and in fact will actually reside in, the judicial arena. The judicial arena will become even more important in settling disputes about competing ideas and philosophies, as well as conflicting political and economic interests and tensions. Thus, the courts will become the main arbitrator of the distribution of scarce educational resources to society, the conveyors and policy makers of public education because various state legislature have, and will continually, be unable to settle long-range education fiscal policies.

Greater education finance equity will rarely emerge from the various interest groups of a given state. Given their constituencies, all such groups, including the legislature, have exhibited difficulty in increasing fiscal equity. Such groups may, at best, only modestly increase funding over a period of years. However, given their constituents and their narrow, provincial interests, these groups generally cannot do so in an equitable manner. It has been observed that only the governor's office could hope to significantly affect finance equity. Unfortunately, this has proved to be largely a failure as well, mostly as a result of the political constraints and resultant residuals that flow from such offices.

Under this system, the judiciary has emerged as the avenue of reform, the vehicle of change, and the final arbitrator of fiscal education policy in the United States. Further, once the avenue of redress becomes solely lodged within the judicial sphere, one could argue that education finance litigation will significantly increase. Education finance litigation is in fact serial in nature. Plaintiffs will return again and again in order to have a court order fully implemented according to how plaintiffs perceive the decision should be operationalized.

In this nation, with its living constitution, equality has long been the goal of social and economic reform. Such a goal envisions children growing to become adults who share equally in the economic, political, and social power of our great nation.

The pursuit of equality in the education finance arena is natural and fundamental to seeking protections to offset the various disadvantages within society. Many have argued and written that a child's opportunity or standing in the educational arena should not be limited by the economic capacity of the parent. Thus, reformers argue that public education must, as an entity, create, transmit, and secure social and economic equality for all individuals in the form of equal educational opportunity. In order to achieve this goal, education finance researchers have long argued the importance of the impact of fiscal resources upon a student's outcomes. Those who fail to recognize this concept make a mockery of equal opportunity mandates.

The concept of equal educational opportunity must be examined in light of several statistical and research models. Overall, does the state aid distribution formula relate to the educational needs of the students of the state? Specifically, it can be argued that the state aid distribution formula must fully eliminate any wealth-related educational opportunity. If the formula does not, then by legislative intent and by its own operational definition, it violates the standard of equal opportunity.[204]

At present, in nearly all education finance litigation cases, the state educational articles are controlling as the plaintiffs ask the state to accomplish what it intended to do in the design of the overall formula. The plaintiffs argue that the operation of the formula must be judged equitable and adequate if the formula is rational. In essence, the argument states that the payment of state and local funds is the state's definition of its intent as well as its definition of equity.

As discussed herein, such arguments can only be proved or disproved via sound and rather sophisticated statistical evaluation. These statistical models generally tend to center around: (1) resource accessibility, that is, asking questions of whether students have equal access to fiscal resources; (2) wealth neutrality, that is, asking questions of whether

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204. This concept is fully developed in studies by the authors, e.g., ADEQUACY OF EDUCATIONAL REVENUES IN OKLAHOMA SCHOOL DISTRICTS: EXPERT ANALYSIS ON BEHALF OF PLAINTIFFS IN Fair School Finance Council, Inc. v. State of Oklahoma; EDUCATIONAL FISCAL EQUALITY IN KANSAS UNDER THE SCHOOL DISTRICT EQUALIZATION ACT: CONSULTANTS' ANALYSES ON BEHALF OF PLAINTIFFS IN Newton U.S.D. 373 et al v. State of Kansas; FISCAL EQUITY IN KANSAS UNDER THE SCHOOL DISTRICT EQUALIZATION ACT: CONSULTANTS' ANALYSIS ON BEHALF OF TURNER U.S.D. 202 IN Mock v. State of Kansas (1992).

resources are related to local wealth; and (3) tax yield standards, that is, asking questions of whether equal tax efforts result in equal tax yields.

Through these types of quantitative analysis, as well as the utilization of qualitative research, such as observations and structured interviews of school leaders, and the use of matched-pairs, plaintiff districts may be able to demonstrate a distribution formula that harms the school children residing within these districts. In several instances, plaintiffs have conclusively demonstrated that specific school districts are unable to engage in equal education as demonstrated by such issues as the district's inability to update textbooks, hire teachers with advanced degrees, purchase school buses on a periodic basis, and offer special education programs in comparison to statistically equivalent school districts within the same state.

Misplaced Reliance on the Courts and Future Strategies

These issues notwithstanding, it would be a grave error in judgment to assume that all of the current suits are virtuous and that state aid distribution formulas, either by intent or by benign neglect, somehow harm certain school districts, and as a result, certain portions of society. Many suits by plaintiffs are without legal or statistical merit. Often, they are misguided attempts by practitioners or zealous reformers to change a given state aid distribution formula with no empirical evidence to support their claims. In these scenarios, a group of superintendents aided by social critics allege that a given distribution formula is ripe for constitutional challenge in that their districts are not receiving the moneys they perceive necessary. Often, after the complaint is filed and the accusations are found by objective education finance researchers to be fairly weak, the tack of the case begins to shift. The plaintiffs argue that they are actually representing all poorer school districts and all school districts harmed by the distribution formula. The statistical analysis determining that plaintiff districts are unharmed by the formula encounters the rhetoric that the formula must be harmful to other school districts within the state. Thus, the plaintiffs shift the argument from focusing on harm within their own district to the assumed harm of other districts. Regardless of who is allegedly harmed, the arguments are that the education finance distribution formula disenfranchises someone because of one or more weaknesses. The plaintiffs then assume that the formula is ripe for constitutional challenge. Oftentimes, these suits emerge largely based on anecdotal data and simplistic statistical overviews. In fact, in several suits currently in existence, plaintiffs' arguments are ill-conceived and poorly designed, perhaps even based on faulty methodology. In these instances, if plaintiffs prevail, greater inequities may emerge. In

certain instances, the relatively poorer school districts would in fact be harmed by such judicial actions.

The authors observe that states often have great difficulty conceiving a defense. For example, the state should always question the standing of the school districts engaging in this activity. This would be a normal and even potentially productive line of defense.[205] However, oftentimes the state clings to the fact that every school district meets a given minimal standard.[206] The plaintiffs may attempt to define the term "minimal" to mean a quality education. This quality definition will be easy to demonstrate if reform measures by the state are promulgated for school district adherence.[207] These strategies become problematic when these questions of definition are the primary defense because they divert attention from the overall defense the state must present. The state must be fully prepared to quantitatively and qualitatively address the issues in the complaint. More specifically, states must be prepared to present defensible quantitative and qualitative models that reflect the distribution formula as rational, related to legitimate policy objectives, and designed to meet equal educational opportunity.

Frequently, states cling to the position that moneys have no bearing on education. Such defenses are often nonsensical and counterproductive. The plaintiffs may refute these observations in a variety of ways. The plaintiffs may present data that the poorest school districts do not have discretionary dollars after meeting mandated state requirements. Further, on several occasions the plaintiffs have utilized the strategy of matched pairs in which poor school districts are matched against relatively wealthy school districts. Thus, comparisons of the educational programs in relationship to overall wealth and expenditures are held up against the state's arguments to the contrary. To pursue arguments that moneys make no difference suggests to the general public that those school districts exhibiting higher per-pupil expenditures should be reprimanded under other statutory grounds for wasting taxpayer dollars.[208] Within this discussion, it is noteworthy that state supreme courts have accepted, as well as rejected, the concept that moneys do in fact make

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205. *See, e.g., East Jackson*, 348 N.W.2d 303.
206. *See, e.g., Rodriguez*, 411 U. S. 1, *reh'g denied*, 411 U.S. 959 (1973).
207. *See* ADEQUACY OF EDUCATIONAL REVENUES IN OKLAHOMA SCHOOL DISTRICTS: EXPERT ANALYSIS ON BEHALF OF PLAINTIFFS IN Fair School Finance Council, Inc. v. State of Oklahoma (1992).
208. The court noted this concept in the original *Serrano* trial; as well as in *Van Dusartz*, 334 F. Supp. at 874.

significant differences in terms of equal educational opportunity.[209] Even with this specific acceptance, it must be noted that the supreme courts of New York and Georgia ruled for the state.

Plaintiff arguments are buttressed by data supporting the reality that state control is pervasive and that school districts have very little, if any, local control over decision-making that has any impact on the operation of schools. The plaintiffs present data concerning the massive regulations that reflect these arguments. States should be fully prepared to note data concerning the utilization of sound administrative and curricular leadership that is recognized and accepted, for example, by effective schools research and the notable lack of such activities within plaintiff school districts.

Throughout the litigation, plaintiffs must be prepared to present defensible data concerning alternative solutions and formulas so as to suggest a workable solution for the court to understand. The responsibility of convincing the court that there are alternative fiscal solutions that meet the constitutional standard rests with the plaintiffs. Otherwise, the state will permeate its arguments with the concept that there may indeed be a problem, but regardless of certain weakness, no real workable solution exists that will meet any illusive theoretical standard. However, the state must be prepared to thoroughly examine and rebut the actual solutions as well as the conceptual solutions that will emerge throughout the litigation. The state must continually remind the court that simply because the plaintiffs present a better methodology for the distribution of scarce resources, this does not, within itself, meet a constitutional test. The plaintiffs must show that the presents methodology conflicts with the state constitution. Such arguments will permeate the discussion as courts attempt to reach a satisfactory conclusion.

On occasion, defendant states engage in convoluted positions yielding interesting arguments. For example, states often argue that a given finance distribution cannot be arbitrary and capricious if it provides for local control. Thus, the state is placed in an interesting position of arguing that if local policy makers were to opt for unequal educational opportunity for children within their own school communities, then

209. *See Serrano*, 487 P.2d 1241 (1971); *Robinson*, 303 A.2d 273 (1973); *Serrano*, 557 P.2d 929 (1976); *Horton*, 376 A.2d 359 (1977); *Washakie*, 606 P.2d 310 (Wyo. 1980); McDaniel v. Thomas, 285 S.E.2d 156 (1981); *Levittown*, 439 N.E.2d 359; Dupree v. Alma Sch. Dist. No. 30, 651 S.W.2d 90; *Pauley*, 324 S.E.2d 128; *Helena*, 769 P.2d 684; *Rose*, 790 S.W.2d 186; *Edgewood*, 777 S.W.2d 391; *Abbott*, 575 A.2d 359; *but cf. Milliken*, 212 N.W.2d 711 (1973); *Thompson*, 537 P.2d 635; *Danson*, 399 A.2d 360.

somehow whatever weaknesses exist are deemed acceptable to the court. The state must make the argument for the policy of local control, but only if the local school districts have the real-world options of providing complete and equal educational services by virtue of the formula.

Concurrently, plaintiffs will be attempting via data analysis and various strategies to link funding disparities to a minimum level of education in order to meet the constitutional mandates regarding public education. If the plaintiffs were able to show that the systems of funding education were inefficient and dependent upon state constitutional language, then this argument is in fact a surrogate to achieve heightened scrutiny. If these cases can develop a nexus between education and resource disparities in terms of educational failure and the impact on individuals, the plaintiffs may prevail. The attempt will be to approximate collective educational failure in order to establish fundamental rights which condemningly link resources to opportunity. These arguments, depending upon the sophistication of data analysis, may offer great promise Again, the state must engage in its own data analysis in order to refute such claims. The mere fact that wide disparities exist is not indicative of the ruling.[210] As an example of this, in *Edgewood v. Kirby* the court viewed education as "a guardian of other important rights."[211] The nexus concept has been specifically accepted by the state supreme courts in Arkansas[212] and Montana.[213]

The overall situation must be understood by all parties. Issues of efficiency, adequacy, and equal protection, can only be supported or refuted via data analysis. These data analyses can consist of both sophisticated quantitative and qualitative models in order for each contention to be proved or disproved.

It is important to note that equal expenditures do not mean equality; however, unequal expenditures do not mean equality either. The courts may accept vast unequal expenditures if the expenditures were equally distributed, for example, sound categorical programs, special programs, high-risk students, and so on. Again, these vertical adjustments must be made in relationship to the wealth of the local community.

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210. *See, e.g.*, State supreme courts ruling for the defendant while specifically examining wide disparities in property tax wealth include *Levittown*, 439 N.E.2d 359 (1982); *Dupree*, 651 S.W.2d 90 (1983); *Fair School Council v. State*, 746 P.2d 1135, (1987); *Kukor*, 436 N.W.2d 568, (1989); *McDaniel*, 285 S.E.2d 156 (1981); *Milliken*, 212 N.W.2d 711 (1973); *Serrano* (*Serrano I*) 487 P.2d 1241 (1971)
211. *Edgewood*, No. 362 at 538 (Dist. Ct. of Travis County 250 Judicial Dist. of Texas June 1, 1987).
212. *Dupree*, 651 S.W.2d at 93.
213. *Helena*, 769 P.2d 684.

Because of these many difficulties, prevailing parties must have sound legal strategies, a comprehensive knowledge of education finance research, and present a careful analysis of data in their presentation to the courts. If one of these aspects fail, the likelihood of prevailing is severely diminished.

It must be realized that the resolution of these disputes will continue to reside within the judicial arena. Even if these enduring education finance disputes were to be resolved, new issues emerge every year. Public education is being forced to become a full-service agency in every sense of the term. With increasing societal pressures and expectations, as well as growing expectations of the only pervasive social agency left within our society, the public education system will be called upon to meet even greater societal needs in the future. Numerous social issues are forcing public school districts to deal with pressures heretofore not envisioned. These problems include children with crack addiction, AIDS, and alcohol fetal syndrome; homeless children; natural disasters; increasing numbers of children with severe needs, and the growing issue of within-school-district equity.[214] This increase of expectations and social ills facing society and the public educational system will only continue because society has no other public agency for dealing with the next generation of its population. State policy issues of site-based management, state tuition tax plans, rapidly changing demographics, and massive growth of special populations will continue to occur and increase in geometric proportions in the future. Thus, the demands on public elementary and secondary education will increase, and the facts dictate that even greater moneys must be distributed in an equitable and adequate manner to public elementary and secondary education in the United States.

While forecasting the future of education finance litigation is generally not a cost-or time-effective task, the authors do offer certain overall ideas as to how plaintiffs, as well as defendants, may be more successful. If plaintiffs can recast education in the light of fundamentality, equal opportunity, and equal protection due to the fact that resources will be seen to impede the opportunity chain of economic, social, physical, and emotional development of individuals, their position will be enhanced. Success in proving or disproving these technical issues and their interpre-

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214. For an illustration of these issues concerning the financing of public education see R. Craig Wood and David S. Honeyman, *Rapid Growth and Unfulfilled Expectations: Problems for School Finance in Florida, Chap. 8 in* WHO PAYS FOR STUDENT DIVERSITY? POPULATION CHANGES AND EDUCATIONAL POLICY, 160-179 (James G. Ward ed., 1991). *See also* David C. Thompson, *Special Needs Students: A Generation at Risk, Chap. 5 in* WHO PAYS FOR STUDENT DIVERSITY? POPULATIONS CHANGES AND EDUCATIONAL POLICY 97-124 (James G. Ward ed.,1991).

tation in relationship with the opportunity chain to state education articles may prove to be an effective surrogate to achieve the same ends. In fact, surrogates may invoke heightened scrutiny or, alternatively, succeed under a minimal standard. Where reform has not required strict scrutiny, if it can be shown that a system were inefficient this, too, offers a possibility. If state cases can be drawn along lines emphasizing a nexus between education and resource disparities in terms of costs of educational failure and impact, some measure of success may emerge, especially under the efficiency questions. Arguments which tie appropriate individual educational experiences to established fundamental rights and which condemningly link resources to opportunity may portend for the future. However, when defendant states can utilize these same strategies in terms of quantitative and qualitative modeling to disprove the allegations, this also is manageable and will lead to better state distribution models for the future. Progress in education finance equity suggests that reform depends on successful strategies by both plaintiffs and defendants to which the judiciary favorably responds.

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